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The Gazette of Puducherry

PART - II

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GOVERNMENT OF PUDUCHERRY
WOMEN AND CHILD DEVELOPMENT SECRETARIAT
(G.O. Ms. No. 4/2015-WCD (SW - IV), dated 30th April 2015)

NOTIFICATION

In exercise of the powers conferred by section 39 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 (Act No. 32 of 2012) read with the Letter No.U-11030/7/2013-UTL, dated 4th April 2014 of the Government of India, Ministry of Home Affairs, New Delhi, the Lieutenant-Governor, Puducherry hereby pleased to make the following Guidelines for the use of Professionals and Experts under section 39 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

**GUIDELINES FOR THE USE OF PROFESSIONALS AND
EXPERTS UNDER SECTION 39 OF THE PROTECTION OF
CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT, 2012
(Act No. 32 of 2012)**

CHAPTER – 1

INTRODUCTION

An overview of the Protection of Children from Sexual Offences Act, 2012.— To deal with child sexual abuse cases, the Government has brought in a special law, namely, The Protection of Children from Sexual Offences (POCSO) Act, 2012. The Act has come into force with effect from 14th November, 2012 along with the rules framed thereunder.

The POCSO Act, 2012 is a comprehensive law to provide for the protection of children from the offences of sexual assault, sexual harassment and pornography, while safeguarding the interests of the child at every stage of the judicial process by incorporating child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts.

The said Act defines a child as any person below eighteen years of age, and defines different forms of sexual abuse, including penetrative and non-penetrative assault, as well as sexual harassment and pornography, and deems a sexual assault to be "aggravated" under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority *vis-à-vis* the child, like a family member, police officer, teacher, or doctor. People who traffic children for sexual purposes are also punishable under the provisions relating to abetment in the said Act. The said Act prescribes stringent punishment graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and fine.

In keeping with the best international child protection standards, the said Act also provides for mandatory reporting of sexual offences. This casts a legal duty upon a person who has knowledge that a child has been sexually abused to report the offence; if he fails to do so, he may be punished with six months imprisonment and/or a fine.

The said Act also casts the police in the role of child protectors during the investigative process. Thus, the police personnel receiving a report of sexual abuse of a child are given the responsibility of making urgent arrangements for the care and protection of the child, such as obtaining emergency medical treatment for the child and placing the child in a shelter home, should the need arise. The police are also required to bring the matter to the attention of the Child Welfare Committee (CWC) within 24 hours of receiving the report, so that the CWC may then proceed where required to make further arrangements for the safety and security of the child.

The said Act makes provisions for the medical examination of the child in a manner designed to cause as little distress as possible. The examination is to be carried out in the presence of the parent or other person whom the child trusts, and in the case of a female child, by a female doctor.

The said Act provides for Special Courts that conduct the trial in-camera and without revealing the identity of the child, in a child-friendly manner. Hence, the child may have a parent or other trusted person present at the time of testifying and can call for assistance from an interpreter, special educator, or other professional while giving evidence; further, the child is not to be called repeatedly to testify in court and may testify through video-link rather than in a courtroom. Above all, the said Act stipulates that a case of child sexual abuse must be disposed of within one year from the date the offence is reported. It also provides for the Special Court to determine the amount of compensation to be paid to a child who has been sexually abused, so that this money can then be used for the child's medical treatment and rehabilitation.

The said Act recognizes almost every known form of sexual abuse against children as punishable offences, and makes the different agencies of the State, such as the police, judiciary and child protection machinery, collaborators in securing justice for a sexually abused child. Further, by providing for a child-friendly judicial process, the said Act encourages children who have been victims of sexual abuse to report the offence and seek redress for their suffering, as well as to obtain assistance in overcoming their trauma. In time, the said Act will provide a means not only to report and punish those who abuse and exploit the innocence of children, but also prove an effective deterrent in curbing the occurrence of these offences.

The said Act is to be implemented with the active participation of the State Governments. Under section 39 of the said Act, the State Government is required to frame guidelines for the use of persons including non-governmental organizations, professionals and experts or persons trained in and having knowledge of psychology, social work, physical health, mental health and child development to assist the child at the trial and pre-trial stage. The following guidelines are formulated by the Central Government, based on which Union Territory of Puducherry Government framed more extensive and specific guidelines as per the specific needs.

Multi-sectoral approach.— Children who have been sexually abused are not only traumatized as a result of their experience, but are also more vulnerable to further and repeated abuse and at risk of secondary victimization at the hands of the justice delivery process. A common example is the handling of cases of child victims by unspecialized police, prosecutors and judges who are not trained in justice for children, children's rights or how to deal and communicate with victim children and their families. The lack of clear guidelines and procedures on how to deal with child victims and their families in a child-sensitive manner during the court process affects the quality of trial and evidence and trial process; the child is subjected in such cases to repeated probing and questioning, made to relive the traumatic incident again and again, and thereby suffer in the retelling. Another instance is that of child victims not receiving proper medical support and counselling, causing physical and mental distress to the child and his/her family and hampering the healing process for the child. In addition to this, families and child victims are unable to benefit from legal aid as the appropriate agencies are not involved at the right stage in the procedure. Child victims do not receive timely advice and assistance so as to be free from a fear of family breakdowns and social isolation if the offender is a relative and/or the breadwinner of the family. There is also no system of supervision for checking the welfare and well-being of child victims during and after the court process, particularly when the abuser is the parent or guardian of the child.

There is thus a need for prompt and systematic multi-sectoral intervention that will be conducive to the justice delivery process, minimize the risks of health problems, enhance the recovery of the child and prevent further trauma. This can be achieved through action that

addresses the needs of the child effectively, not only to protect him from further abuse and help him deal with his/her trauma but also to ensure that he is not revictimised in the course of the justice delivery process. In addition to this, it also has to be ensured that the child is steered towards the path of healing, recovery and rehabilitation.

The prevention of child sexual abuse, protection of victims, justice delivery, and rehabilitation of victims are not isolated issues. The achievement of these objectives requires a co-ordinate response of all the key players, which include the police, prosecution, courts, medical institutions, psychologists and counsellors, as well as institutions that provide social services to the children. The protection of children from violence and abuse thus requires an integrated and coordinated approach. Needless to say, the identification and understanding of the roles of each of these professionals is crucial to avoid duplication and promote effective convergence.

A multi-sectoral approach, while mindful of children's rights, would address the problems related to uncoordinated interagency mechanisms that child victims face in the legal and social service process. It will provide a frame work within which the service providers will work and provide a mechanism for information-sharing to help the victim. The process of investigation and referral of cases will also improve. It is envisaged that such an approach will ensure support for the child and his/her family, including assistance with police and court proceedings, arrangements for emergency shelter for children, arrangements for counselling, therapy, and training courses, appropriate rehabilitative services including protective custody and foster care, if necessary; information on and access to financial assistance, where appropriate, and monitoring of family involvement.

The responsibility of supporting children who have been sexually abused should be embraced by the whole community, but it is the professionals that work in this field who play an important role in enabling the healing process. These guidelines are therefore aimed at various professionals involved in providing services to the child and other affected persons including his/her family. Their objective is to foster better response mechanisms involving coordination amongst these professionals, so as to result in the evolution of a multi-sectoral, multi-disciplinary approach that will go a long way in achieving the objectives of the POCSO Act, 2012.

CHAPTER – 2

GENERAL PRINCIPLES FOR USE OF PROFESSIONALS AND EXPERTS ASSISTING THE CHILD AT PRE-TRIAL AND TRIAL STAGES

The fundamental principles to be followed in the determination of a case involving a sexual offence against a child have been laid down in various international instruments and in the Preamble to the POCSO Act, 2012 itself. The State Governments, the Child Welfare Committee, the Police, the Special Courts, all other Government functionaries as well as Non-Government Organisations, and all professionals and experts assisting the child at the trial and pre-trial stages are bound to abide by these principles.

These principles are –

(a) *Right to life and survival.*— Every child has the right to life and survival and to be shielded from any form of hardship, abuse or neglect, including physical, psychological, mental and emotional abuse and neglect; and to a chance for harmonious development and a standard of living adequate for physical, mental, spiritual, moral and social growth. In the case of a child who has been traumatized, every step should be taken to enable the child to enjoy healthy development.

(b) *The best interests of the child.*— Every child has the right to have his/her best interests given primary consideration. This includes the right to protection and to a chance for harmonious development. Protecting the child's best interests means not only protecting the child from secondary victimisation and hardship while involved in the justice process as victim or witness, but also enhancing the child's capacity to contribute to that process. Secondary victimisation refers to the victimisation that occurs not as a direct result of the criminal act but through the response of institutions and individuals to the victim.

(c) *The right to be treated with dignity and compassion.*— Child victims should be treated in a caring and sensitive manner throughout the justice process, taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity. Interference in the child's private life should be limited to the minimum needed and information shared on a need to know basis. Efforts should also be made to reduce the number of professionals interviewing the

child. At the same time, however, it is important that high standards of evidence collection are maintained in order to ensure fair and equitable outcomes of the justice process. In order to avoid further hardship to the child, interviews, examination and other forms of investigation should be conducted by trained professionals who proceed in a sensitive, respectful and thorough manner in a child-friendly environment. All interactions should also take place in a language that the child uses and understands. Medical examination should be ordered only where it is necessary for the investigation of the case and is in the best interests of the child and it should be minimally intrusive.

(d) *The right to be protected from discrimination.*— The justice process and support services available to child victims and witnesses and their families should be sensitive to the child's age, wishes, understanding, gender, sexual orientation, ethnic, cultural, religious, linguistic and social background, caste and socio-economic condition, as well as to the special needs of the child, including health, abilities and capacities. Professionals should be trained and educated about such differences. Age should not be a barrier to a child's right to participate fully in the justice process. Every child should be treated as a capable witness, according to his/her age and level of maturity.

(e) *The right to special preventive measures.*— Children may already face twice as much risk of repeated victimisation as adults because they often are or are perceived by a potential offender as being vulnerable, unsure of how to defend themselves or unable to properly assert themselves and take a strong position against an adult. A preventive measure that could be used to protect children is to demand references and a criminal background assessment before hiring personnel likely to work with children, such as school teachers.

(f) *The right to be informed.*— There are two aspects of child “victims and witnesses” right to be informed. The first aspect is the more general one and consists of informing child victims and witnesses about the assistance they are entitled to, the way legal proceedings are organized and the role they can play in those proceedings if they decide to do so. The second aspect is more specific and relates to information on the particular case in which the child is involved: it implies being informed about the progress of the case, about the scheduling of the proceedings, about what is expected of the child, about the decisions rendered, about the status of the offender, and so forth.

(g) *The right to be heard and to express views and concerns.*—

Every child has the right to be heard in respect of matters affecting him/her. The child has a right to participate at all levels: being informed, expressing an informed view, having that view taken into account, and being the main or joint decision maker. When, for any good reason, the requirements and expectations of the child cannot be met, it needs to be explained to the child, in a child-friendly way, why certain decisions are made, why certain elements or facts are or are not discussed or questioned in Court and why certain views are not taken into consideration. It is important to show respect for elements that a child finds important in his/her story, but which are not necessarily relevant as evidence.

(h) *The right to effective assistance.*— The child must receive the required assistance to address his/her needs and enable him/her to participate effectively at all stages of the justice process. This may include assistance and support services such as financial, legal, counselling, health, social and educational services, physical and psychological recovery services and other services necessary for the child's healing, as well as for justice and reintegration.

(i) *The right to privacy.*— The child's privacy and identity must be protected at all stages of the pre-trial and trial process. The release of information about a child victim or witness, in particular in the media, may endanger the child's safety, cause the child intense shame and humiliation, discourage him from telling what happened and cause him severe emotional harm. Release of information about a child victim or witness may put a strain on the relationships of the child with family, peers and community, especially in cases of sexual abuse. In some cases it might also lead to stigmatization by the community, thereby aggravating secondary victimization of the child. There are two essential ways of protecting the privacy of child victims and witnesses: firstly, by restricting the disclosure of information on child victims and witnesses and secondly, by restricting the attendance of the general public or non-essential persons in courtrooms.

(j) *The right to be protected from hardship during the justice process.*— Throughout the justice process, child victims are exposed to hardship; also referred to as secondary victimization: this can occur while reporting the crime and recounting what has happened, while awaiting trial and while testifying in court. The judicial process is a very stressful one for the child as far as possible, any stress the child may have as a result of the process should be minimized.

(k) *The right to safety.*— Where the safety of a child victim may be at risk, appropriate measures should be taken to require the reporting of those safety risks to appropriate authorities and to protect the child from such risk before, during and after the justice process. Professionals should be trained in recognizing and preventing intimidation, threats and harm to child victims and witnesses. Where child victims and witnesses may be the subject of intimidation, threats or harm, appropriate conditions should be put in place to ensure the safety of the child.

(l) *The right to compensation.*— The child victim may be awarded compensation¹ for his/her relief and rehabilitation. This compensation may be awarded at an interim stage, during the pendency of trial, as well as at the conclusion of the trial. Procedures for obtaining and enforcing reparation should be readily accessible and child-sensitive. Victims may be repaid for material losses and damages incurred, receive medical and/or psychosocial support and obtain reparation for ongoing suffering.

¹ As per section 33 (8) of POCSO Act, 2012 and Rule 7(3) of POCSO Rules, 2012 so as to commensurate with the short and long term negative impact on the child. Further, as stated in Rule 7 (4) of the POCSO Rules, 2012, the compensation is to be paid by State Government from the Victims Compensation Fund or other scheme or fund established by it under Code of Criminal Procedure, 1973 or any other law for the time being in force, and in the absence of such fund or scheme, by the State Government.

CHAPTER – 3

GUIDELINES ON INTERVIEWING A CHILD : FORENSIC INTERVIEW PROTOCOL

There are two distinct aspects to the gathering of information from the child (or attending adults) in cases of alleged child sexual abuse: (a) the medical history and (b) the interview. The interview stage of the assessment goes beyond the medical history in that it seeks to obtain information directly related to the alleged sexual abuse, for example, details of the assault, including the time and place, frequency, description of clothing worn and so on. Interviewing of children is a specialized skill and, if possible, should be conducted by a trained professional.

In the context of the POCSO Act, 2012 interviews may need to be conducted by a variety of professionals, including police or investigative agencies. These are forensic rather than therapeutic interviews, with the objective being to obtain a statement from the child in a manner that is developmentally-sensitive, unbiased, and truth-seeking, that will support accurate and fair decision-making in the criminal justice and child welfare systems. Information obtained from an investigative or forensic interview may be useful for making treatment decisions, but the interview is not part of a treatment process.

The following are some basic guidelines that should be kept in mind while conducting the forensic interview to ensure that the interview process does not become traumatic for the child. Regardless of who is responsible for the medical history and interview, the two aspects of information gathering should be conducted in a coordinated manner so that the child is not further traumatized by unnecessary repetition of questioning and information is not lost or distorted.

1. Reasons for interviewing the child :

- (i) To get a picture of the child's physical and emotional state;
- (ii) To establish whether the child needs urgent medical attention;
- (iii) To hear the child's version of the circumstances leading to the concern;
- (iv) To get a picture of the child's relationship with their parents or family;

- (v) To support the child to participate in decisions affecting them according to their age and maturity;
- (vi) To find out who the child trusts;
- (vii) To inform the child of any further steps to be taken in the enquiry;
- (viii) To assure the child that he/she is now safe and would be cared for, looked after, protected; and
- (ix) To identify areas that would/might need counselling/psychiatric intervention.

1.1 *Interview setting* : The more comfortable a child is, the more information he is likely to share. Also, children may be too embarrassed to share intimate details when they believe that others can overhear what they are saying. As far as possible, interviews should be conducted in a safe, neutral and child-friendly environment.

The interviewer can incorporate elements to make a room appear child-friendly, such as toys, art material or other props. Distractions like ringing phones, other people's voices and elaborate play material should be removed as far as possible.

1.2 *Things to be kept in mind while interviewing a child* :

(i) All children should be approached with extreme sensitivity and their vulnerability recognized and understood.

(ii) Try to establish a neutral environment and rapport with the child before beginning the interview. For example, if the interview must be conducted in the child's home, select a private location away from parents or siblings that appears to be the most neutral spot.

(iii) Try to select locations that are away from traffic, noise, or other disruptions. Items such as telephones, cell phones, televisions, and other potential distractions should be temporarily turned off.

(iv) The interview location should be as simple and uncluttered as possible, containing a table and chairs. Avoid playrooms or other locations with visible toys and books that will distract children.

(v) Always identify yourself as a helping person and try to build a rapport with the child.

(vi) Make the child comfortable with the interview setting. Gather preliminary information about the child's verbal skills and cognitive maturity. Convey that the goal of the interview is for the child to talk and ask questions that invite the child to talk (*e.g.*, "tell me about your family").

(vii) Ask the child if he/she knows why they have come to see you. Children are often confused about the purpose of the interview or worried that they are in trouble.

(viii) Convey and maintain a relaxed, friendly atmosphere. Do not express surprise, disgust, disbelief, or other emotional reactions to descriptions of the abuse.

(ix) Avoid touching the child and respect the child's personal space. Do not stare at the child or sit uncomfortably close.

(x) Do not suggest feelings or responses to the child. For example, do not say, "I know how difficult this must be for you."

(xi) Do not make false promises. For example, do not say, "Everything will be okay" or "You will never have to talk about this again."

(xii) Establish ground rules for the interview, including permission for the child to say he/she doesn't know and permission to correct the interviewer.

(xiii) Ask the child to describe what happened, or is happening, to them in their own words. The interviewer should, as far as possible, follow the child's lead; however, he may have to delicately introduce the topics of the abuse.

(xiv) Always begin with open-ended questions. Avoid asking the child a direct question, such as "Did somebody touch your privates last week?" Instead, try "I understand something has been bothering you. Tell me about it."

(xv) After initially starting like this, move on to allow the child to use free narrative. For example, you can say, "I want to understand everything about [refer back to child's statement]. Start with the first thing that happened and tell me everything you can, even things you don't think are very important."

(xvi) Avoid the use of leading questions that imply an answer or assume facts that might be in dispute and use direct questioning only when open-ended questioning/free narrative has been exhausted.

(xvii) The interviewer should clarify the following:

- (a) Descriptions of events.
- (b) The identity of the perpetrator(s).
- (c) Whether allegations involve a single event or multiple events.
- (d) The presence and identities of other witnesses.
- (e) Whether similar events have happened to other children.
- (f) Whether the child told anyone about the event(s).
- (g) The time frame and location/venue.
- (h) Alternative explanations for the allegations.

(xviii) However, interviewers should avoid probing for unnecessary details. For example, it may not be essential to get a detailed description of an alleged perpetrator if he/she is someone who is familiar to the child (*e.g.*, a relative or teacher). Although it is useful if the child can recall when and where each event occurred, children may have difficulty specifying this information if they are young, if the event happened a long time ago, or if there has been ongoing abuse over a period of time.

(xix) The child may get exhausted frequently and easily; in such an event, it is advisable not to prolong the inquiry, but rather to divert the child's mind and come back to the sexual abuse when the child is refreshed.

(xx) Regularly check if the child is hungry or thirsty, tired or sleepy, and address these needs immediately.

(xxi) Let the child do the talking and answer any questions the child may have in a direct manner.

(xxii) Avoid questioning the child as to why he behaved in a particular way (*e.g.*, "Why didn't you tell your mother that night?"). Young children have difficulty answering such questions and may feel that you are blaming them for the situation.

(xxiii) Avoid correcting the child's behaviour unnecessarily during the interview. It can be helpful to direct the child's attention with meaningful explanations (e.g., "I have a little trouble hearing, so it helps me a lot if you look at me when you are talking so that I can hear you") but avoid correcting nervous behaviour that may be slowing the pace of the interview or even preventing it from proceeding.

(xxiv) When two professionals will be present, it is best to appoint one as the primary interviewer, with the second professional taking notes or suggesting additional questions when the interview is drawing to a close.

(xxv) Interviewers should not discuss the case in front of the child.

(xxvi) Individuals who might be accused of influencing children to discuss abuse, such as parents involved in custody disputes or therapists, should not be allowed to sit with children during interviews.

(xxvii) In some cases, the interviewer may consider it appropriate to allow a support person to sit in on the interview; but in these situations, such a person be instructed that only the child is allowed to talk unless a question is directed to the support person. Also, the support person should be seated out of the child's line of vision to avoid allegations that the child was reacting to nonverbal signals from a trusted adult.

(xxviii) When planning investigative strategies, consider other children (boys as well as girls) that may have had contact with the alleged perpetrator. For example, there may be an indication to examine the child's siblings. Also consider interviewing the parent or guardian or other family member of the child, without the child present.

(xxix) The interviewer should convey to all parties that no assumptions have been made about whether abuse has occurred.

(xxx) The interviewer should take the time necessary to perform a complete evaluation and should avoid any coercive quality to the interview.

(xxxi) Interview procedures may be modified in cases involving very young, minimally verbal children or children with special needs (e.g., developmentally delayed, electively mute, non-native speakers).

(xxxii) Try to establish the child's developmental level in order to understand any limitations as well as appropriate interactions. It is important to realize that young children have little or no concept of numbers or time, and that they have limited vocabulary and may use terminology differently to adults, making interpretation of questions and answers a sensitive matter.

(xxxiii) A variety of non-verbal tools may be used to assist young children in communication, including drawings, toys, dollhouses, dolls, puppets, etc. Since such materials have the potential to be distracting or misleading they should be used with care. They are discretionary for older children.

(xxxiv) Story books, colouring books or videos that contain explicit descriptions of abuse situations are potentially suggestive and are primary teaching tools. They are typically not appropriate for information-gathering purposes.

In certain situations, the interviewer may consider it appropriate to interview the child victim together with his/her parent or guardian or other person in whom the child has trust and confidence. In such cases, the following guidance may be useful :

(i) When possible, interviewing the primary caregiver and reviewing other collateral data first to gather background information may facilitate the evaluation process.

(ii) The child should be seen individually, except when the child refuses to separate from a parent/guardian. Discussion of possible abuse with the child in the presence of the caregiver during evaluation interviews should be avoided except when necessary to elicit information from the child. In such cases, the interview setting should be structured to reduce the possibility of improper influence by the caregiver on the child's behaviour or statements.

(iii) In some cases, joint sessions with the child and the non-accused caregiver or accused or suspected individual might be helpful to obtain information regarding the overall quality of the relationships. Such joint sessions should not be conducted for the purpose of determining whether abuse occurred based on the child's reactions to the participating adult. Joint sessions should not be conducted if they will cause significant distress for the child.

2. Children with special needs :

(i) It is important to understand that children may have special physical or mental needs, or a combination of both.

(ii) Be aware that the risk of criminal victimization (including sexual assault) for children with special needs appears to be much higher than for those without such needs. Children with special needs are often victimized repeatedly by the same offender. Caretakers, family members, or friends may be responsible for the sexual abuse.

(iii) Respect the child's wishes to have or not have caretakers, family members, or friends present during the interview. Although these persons may be accustomed to speaking on behalf of the child, it is critical that they not influence the statements of the child. If professional assistance is required (e.g., from a language interpreter or mental health professional) this should be arranged.

(iv) Ideally those providing assistance should not be associated with the child. Thus as far as possible, avoid using a relative or friend of the child as an interpreter.

(v) When preparing for the interview, consult with the adults in the child's world who understand the nature of his/her disability and are familiar with how the child communicates. Teachers and other professionals or paraprofessionals who have had experience in communicating with the child can be an invaluable resource to the interview team. This may include speech/language pathologists, educational psychologists, counsellors, teachers, clinical psychologists, social workers, nurses, child and adolescent psychiatrists, pediatricians, etc.

(vi) Speak directly to a child with special needs, even when interpreters, intermediaries, or guardians are present. Assess the child's level of ability and need for assistance during the interview process.

(vii) Note that not all children who are deaf or hard-of-hearing understand sign language or can read lips. Not all blind persons can read Braille. Be aware that a child with sensory disabilities may prefer communicating through an intermediary who is familiar with his/her patterns of speech. Ideally, this would be someone not associated with the child, but in some cases this may be necessary.

(viii) The child may experience difficulty with the concept of time, such as the concept of before and after, and being able to sequence events. The child may not be able to accurately define when something happened. It may be helpful to link events with major activities in the child's life, school events, or routines such as mealtimes.

(ix) Allow extra time for the interpreter to transfer the complete message to the child and for the child to form answers.

(x) Recognize that the child may have also some degree of cognitive disability: mental retardation, mental illness, developmental disabilities, traumatic brain injury, etc. Note however that not all developmental disabilities affect cognitive ability (e.g., cerebral palsy may result in physical rather than mental impairment). Be aware that a child with cognitive disabilities may be easily distracted and have difficulty focusing. Speak to the child in a clear, calm voice and ask very specific, concrete questions. Be exact when explaining what will happen during the medical examination process and why.

(xi) Keep in mind that children with special needs may be reluctant to report the crime or consent to the examination for fear of losing their independence. For example, they may have to enter a long-term care facility if their caretakers assaulted them or may need extended hospitalization to treat and allow injuries to heal.

(xii) While a child's special need may have resulted in him being more vulnerable to abuse, it is important to listen to his/her concerns about the assault and what the experience was like for them, and not focus on the role of his/her special need.

(xiii) Assure the child that it is not his/her fault that he was sexually assaulted. If needed, encourage discussion in a counselling/advocacy setting if he/she is concerned about their safety in the future.

3. *Procedures when interviewing parents/caregivers :*

(i) Inform parents/caregivers in an open and honest way of existing concerns and reports about their child or children;

(ii) Explain how information about the case has been, and will be, obtained;

(iii) Identify the professionals who have been contacted so far;

(iv) Invite the parents/caregivers to give an explanation of their view of the concern;

(v) Show a willingness to consider different interpretations of the concern;

(vi) Ensure that the parents/caregivers are fully aware of the way that information is going to be assessed and evaluated, and what expectations are held of them about the way they care for and protect their children;

(vii) Explain the legal context in which the concern is being investigated;

(viii) If the concern arose from an incident perpetrated by one of the child's parents/caregivers, the worker should try to gain the support and cooperation of the other parent/caregiver to facilitate ongoing protection of the child; and

(ix) A child should never be asked to discuss the possible abuse in front of an accused or suspected parent.

If it is considered necessary by CWC to remove a child from his/her parents/caregivers or their homes, then the following must be considered : ²

² Rule 4(5) and (6) of POCSO Rules, 2012 states that prior to making a determination as to whether the child needs to be taken out of the custody of his/her family or shared household, the inquiry should be conducted in a manner that does not unnecessarily expose the child to injury or inconvenience. Hence, these considerations would help ascertain the same.

(i) In the first instance, all possible efforts should be made to place the child in a situation that is familiar, preferably with family or friends

(ii) As far as possible, the timing of the move should be sensitively handled.

(iii) The child's parents/caregivers should be informed of the action proposed, unless doing so would endanger the child or jeopardize the placement process.

(iv) The child should be informed of the proposed action if he or she has not been involved in the decision.

(v) The child's parents/caregivers should be informed of the child's location, unless otherwise directed by the Court.

(vi) The child's parents/caregivers should be advised about and assisted in obtaining legal advice.

4. *Best practice principles for the use of interpreters :*

Interpreters may be needed during both the investigation and trial of cases of child sexual abuse. They may be needed for witnesses and for parties who speak a language different from that of the Court in that State, or for witnesses and parties who have speech or hearing impairments or other communication difficulties.

The police or Special Juvenile Police Unit may contact the District Child Protection Unit (DCPU), whose responsibility it is under the POCSO Act and Rules, 2012 to provide interpreters, translators, etc. Where an interpreter is not available, a non-professional may be asked to interpret for the child; however, in these cases, it must be ensured that there is no conflict of interest. For example, where there is an allegation of child sexual abuse against the child's father, the mother should not be asked to interpret.

(i) Promote access to interpreter services in order to facilitate the best possible communication with the child, to ensure everything is fully explained and that there is no room for misinterpretation.

(ii) Be clear with the interpreter about roles and responsibilities in the process of engagement with the family. Interpreters need to understand that their role is to translate

direct communications between the police or support person etc. and the family members, not to talk on either party's behalf or act as the family's representative.

(iii) Services must be planned ahead where possible to meet the child's needs.

(iv) Interpreter should declare that there is no prior acquaintance or relationship with the victim/witness

(v) Maintain high quality, timely, precise records along with supporting documents; as far as possible, this should be a verbatim record of the communication.

(vi) There should be a record of a child's interpreter needs, including language and dialect, and whether the interpreter is required for oral and written communication. Where an interpreter is offered but declined by the child, this should also be recorded.

(vii) Promote qualified interpreters who can work in partnership in the best interests of the child.

(viii) Interpreters should be subject to references and background checks and must sign a written agreement regarding confidentiality.

CHAPTER – 4

MEDICAL AND HEALTH PROFESSIONALS (DOCTORS AND SUPPORTING MEDICAL STAFF)

1. Relevant legal provisions in the Act and rules and related laws:

Section 27 - Medical Examination :

27. (1) The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with section 164A of the Code of Criminal Procedure, 1973.

(2) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.

(3) The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.

(4) Where, in case the parent of the child or other person referred to in sub-section (3) cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in the presence of a woman nominated by the head of the medical institution.

Rule 5 – Emergency medical care :

(1) Where an officer of the SJPU, or the local police receives information under section 19 of the Act that an offence under the Act has been committed, and is satisfied that the child against whom an offence has been committed is in need of urgent medical care and protection, he shall, as soon as possible, but not later than 24 hours of receiving such information, arrange to take such child to the nearest hospital or medical care facility centre for emergency medical care:

Provided that where an offence has been committed under sections 3, 5, 7 or 9 of the Act, the victim shall be referred to emergency medical care.

(2) Emergency medical care shall be rendered in such a manner as to protect the privacy of the child, and in the presence of the parent or guardian or any other person in whom the child has trust and confidence.

(3) No medical practitioner, hospital or other medical facility centre rendering emergency medical care to a child shall demand any legal or magisterial requisition or other documentation as a pre-requisite to rendering such care.

(4) The registered medical practitioner rendering emergency medical care shall attend to the needs of the child, including–

(i) treatment for cuts, bruises, and other injuries including genital injuries, if any;

(ii) treatment for exposure to sexually transmitted diseases (STDs) including prophylaxis for identified STDs;

(iii) treatment for exposure to Human Immunodeficiency Virus (HIV), including prophylaxis for HIV after necessary consultation with infectious disease experts;

(iv) possible pregnancy and emergency contraceptives should be discussed with the pubertal child and her parent or any other person in whom the child has trust and confidence; and,

(v) wherever necessary, a referral or consultation for mental or psychological health or other counselling should be made.

(5) Any forensic evidence collected in the course of rendering emergency medical care must be collected in accordance with section 27 of the Act.

Thus, doctors and support medical staff are involved both at the time of rendering emergency medical care as well as at the time of medical examination.

2. *Emergency medical care.*— The child may be brought to the hospital for emergency medical care as soon as the police receive a report of the commission of an offence against the child. In such cases, the rules under the POCSO Act, 2012 prescribe that the child is to be taken to the nearest hospital or medical care facility. This may be a government facility or a private one.

This is reiterated by section 23 of the Criminal Law Amendment Act, which inserts section 357C into the Code of Criminal Procedure, 1973. This section provides that all hospitals are required to provide first-aid or medical treatment, free of cost, to the victims of a sexual offence.

2.1 *Medical examination.*— Medical examination is to be conducted as per the provisions of section 27 of the POCSO Act, 2012 and section 164A of the Cr. PC, 1973 which states :

(1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and

in the absence of a such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

(2) The registered medical practitioner, to whom such woman is sent shall, without delay, examine her and prepare a report of her examination giving the following particulars, namely:—

- (i) the name and address of the woman and of the person by whom she was brought;
- (ii) the age of the woman;
- (iii) the description of material taken from the person of the woman for DNA profiling;
- (iv) marks of injury, if any, on the person of the woman;
- (v) general mental condition of the woman; and
- (vi) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report.

(6) The registered medical practitioner shall, without delay forward the report to the investigation officer who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.

(7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.

In the above legal provision, the term "woman" may be substituted by the term "child", and applied in the context of the POCSO Act, 2012.

2.2 Compensation for medical expenses :

Section 33(8) provides –

"In appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child."

Rule 7 provides further details in relation to the payment of this compensation. It specifies that the Special Court may order that the compensation be paid not only at the end of the trial, but also on an interim basis, to meet the immediate needs of the child for relief or rehabilitation at any stage after registration of the First Information Report [Rule 7(1)]. This could include any immediate medical needs that the child may have. Further, Rule 7(3) provides that the *criteria* to be taken into account while fixing the amount of compensation to be paid include the severity of the mental or physical harm or injury suffered by the child; the expenditure incurred or likely to be incurred on his/her medical treatment for physical and/or mental health; and any disability suffered by the child as a result of the offence. Hence, the child may recover the expenses incurred on his/her treatment in this way.

3. Modalities of medical examination of children:

3.1 Role of medical professionals in the context of the POCSO Act, 2012.— Doctors have a dual role to play in terms of the POCSO Act, 2012. They are in a position to detect that a child has been or is being abused (for example, if they come across a child with an STD); they are also often the first point of reference in confirming that a child has indeed been the victim of sexual abuse.

The role of the doctor may include :

- (i) Having an in-depth understanding of sexual victimization;
- (ii) Obtaining a medical history of the child's experience in a facilitating, non-judgmental and empathetic manner;
- (iii) Meticulously documenting historical details;
- (iv) Conducting a detailed examination to diagnose acute and chronic residual trauma and STDs, and to collect forensic evidence;

- (v) Considering a differential diagnosis of behavioural complaints and physical signs that may mimic sexual abuse;
- (vi) Obtaining photographic/video documentation of all diagnostic findings that appear to be residual to abuse;
- (vii) Formulating a complete and thorough medical report with diagnosis and recommendations for treatment; and
- (viii) Testifying in court when required.

There are at least three different circumstances when there is no direct allegation but when the doctor may consider the diagnosis of sexual abuse and have to ask questions of the parent and child. These include but are not limited to :

- (i) when a child has a complaint that might be directly related to the possibility of sexual abuse, such as a girl with a vaginal discharge;
- (ii) when a child has a complaint that is not directly related to the possibility of sexual abuse, such as abdominal pain or encopresis (soiling);
- (iii) when a child has no complaint but an incidental finding, such as an enlarged hymenal ring, makes the doctor suspicious.

3.2 *Mandatory reporting.*— When a doctor has reason to suspect that a child has been or is being sexually abused, he/she is required to report this to the appropriate authorities (*i.e.*, the police or the relevant person within his/her organisation who will then have to report it to the police). Failure to do this would result in imprisonment of up to six months, with or without fine.³

3.3 *Medical or health history.*— The purpose of this is to find out why the child is being brought for health care at the present time and to obtain information about the child's physical or emotional symptoms. It also provides the basis for developing a medical diagnostic impression before a physical examination is conducted. The medical history may involve information about the alleged abuse, but only in so far as it relates to health problems or symptoms that have resulted therefrom, such as bleeding at the time of the assault, or constipation or insomnia since that time.

³ Section 21, Protection of Children from Sexual Offences Act, 2012.

Where a child is brought to a doctor for a medical examination to confirm sexual abuse, the doctor must :

(i) Take the written consent of the child. The three main elements of consent are information, comprehension and voluntariness. The child and his/her family should be given information about the medical examination process and what is involved therein, so that they can choose whether or not to participate. Secondly, they should be allowed enough time to understand the information and to ask questions so that they can clarify their doubts. Lastly, the child and/or his or her parent/guardian should agree to the examination voluntarily, without feeling pressurised to do so. In some situations it may be appropriate to spend time with the child/adolescent alone, without the parent/guardian present. This may make it easier for the child to ask questions and not feel coerced by a parent/guardian.

(ii) Where the child is too young or otherwise incapable of giving consent, consent should be obtained from the child's parent, guardian or other person in whom the child has trust and confidence.

(iii) The right to informed consent implies the right to informed refusal.

(iv) To be able to give informed consent, the child and his/ her parents/guardian need to understand that health care professionals may have a legal obligation to report the case and to disclose information received during the course of the consultation to the authorities even in the absence of consent.

(v) Document who was present during the conversation with the child.

(vi) Document questions asked and child's answers in the child's own words.

(vii) Conduct the examination in a sensitive manner. It is important that the exam is never painful. The exam should be done in a manner that is least disturbing to the child.

(viii) Focus on asking simply worded, open-ended, non-leading questions, such as the "what, when, where, and how" questions, which are important to the medical evaluation of suspected child sexual abuse.

(ix) Reliance should be placed as far as possible on such questioning as "tell me more" followed by "and then what happened?"

(x) Do not ask uncomfortable questions related to details of the abuse, but try to find out more about the medical and family history of the child.

(xi) Using the child's words for body parts may make the child more comfortable with difficult conversations about sexual activities.

(xii) Using drawings may also help children describe where they may have been touched and with what they were touched.

(xiii) Ensure that the child has adequate privacy while the examination is being conducted.

(xiv) Do not conduct the examination in a labour room or other place that may cause additional trauma to the child.

(xv) Always ensure patient privacy. Be sensitive to the child's feelings of vulnerability and embarrassment and stop the examination if the child indicates discomfort or withdraws permission to continue.

(xvi) Always prepare the child by explaining the examination and showing equipment; this has been shown to diminish fears and anxiety. Encourage the child to ask questions about the examination.

(xvii) If the child is old enough, and it is deemed appropriate, ask whom they would like in the room for support during the examination. Some older children may choose a trusted adult to be present. Sexual abuse of children is usually not physically violent. In the large majority of children the physical exam is normal. A normal or non-specific exam does not rule out sexual abuse.

(xviii) As a minimum, the medical history should cover any known health problems (including allergies), immunization status and medications. In terms of obtaining information about the child's general health status, useful questions to ask would be :

(a) Tell me about your general health.

(b) Have you seen a nurse or doctor lately?

(c) Have you been diagnosed with any illnesses?

(d) Have you had any operations?

(e) Do you suffer from any infectious diseases?

(xix) Carefully collect and preserve forensic evidence

(xx) Clothing collection is critical when evidence is collected. Clothing, especially underwear, is the most likely positive site for evidentiary DNA.

(xxi) Scene investigation, including collection of linens and clothing should be done early. Evidence from clothing and other objects is more likely to be positive than evidence from the patient's body.

(xxii) Children often report weeks or months after the abuse event, and physical injuries to the genital or anal regions usually heal within a few days. This is why the medical provider should always consider differential diagnosis and alternative explanations for physical signs and symptoms.

(xxiii) In the case of a child with special needs, ensure that the procedures are explained to the child in a manner which he/she understands and that he/she is asked what help he/she requires, if any (e.g., a child with physical disabilities may need help to get on and off the medical examination table or to assume positions necessary for the examination). However, do not assume that the child will need special aid. Also, ask for permission before proceeding to help the child.

(xxiv) Recognize that it may be the first time the child is having an internal examination. The child may have very limited knowledge of reproductive health issues and not be able to describe what happened to them. He/She may not know how he/she feels about the incident or even identify that a crime was committed against him/her.

(xxv) Wherever necessary, refer the child for counselling.

(xxvi) Wherever applicable, refer the child for testing for HIV and other Sexually Transmitted Diseases

3.4 *If the child resists the examination :*

(i) If a child of any age refuses the genital-anal examination, it is a clinical judgment of how to proceed. A rule of thumb is that the physical exam should not cause any trauma to the child. It may be wise to defer the examination under these circumstances.

(ii) It may be possible to address some of the child's fears and anxieties (*e.g.* a fear of needles) or potential sources of unease (*e.g.* the sex of the examining health worker). Further, utmost comfort and care for the child should be provided *e.g.*, examining very small children while on their mother's (or caregiver's) lap or lying with her on a couch.

(iii) If the child still refuses, the examination may need to be deferred or even abandoned. Never force the examination, especially if there are no reported symptoms or injuries, because findings will be minimal and this coercion may represent yet another assault to the child.

(iv) The child should not be held down or restrained for the examination (exception for infants or very young toddlers).

3.4.1 *Techniques to help the child relax :*

(i) Offer clear age-appropriate explanations for the reasons for each procedure, and offer the child some control over the exam process.

(ii) Proceed slowly, explain each step in advance.

(iii) Use curtains to protect privacy, if the child wishes.

(iv) Explain to parent or support person that their job is to talk to and distract the child, and the findings of the exam will be discussed with them after the exam is completed.

(v) Position the parent near the child's head.

(vi) Use distracters. For example, ask the parent to sing a song, or tell a familiar story, or read a book to the child. A nurse or other helper can do this if the parent is unable.

(vii) Use TV, cell phone game, or other visual distraction.

(viii) Do not forcibly restrain the child for the examination

3.5 *Sedation for medical treatment :*

(i) Sedation is rarely needed if the child is informed about what will happen and there is adequate parental support for the child.

(ii) Consider sedation or a general anesthetic only if the child refuses the examination and conditions requiring medical attention, such as bleeding or a foreign body, are suspected.

(iii) If it is known that the abuse was drug-assisted, the child needs to be told that he/she will be given a sedative or be put to sleep, that this may feel similar to what he/she has experienced in the past.

(iv) Reassure the child about what will take place during the time under sedation and that he/she will be informed of the finding.

(v) However, conscious sedation is an option if examination and evidence collection is required, and the child is not able to cooperate.

(vi) Speculum exam on a pre-pubertal girl should be done under anesthesia, not conscious sedation.

3.6 The following pieces of information are essential to the medical history :

(i) Last occurrence of alleged abuse (younger children may be unable to answer this precisely). When do you say this happened?

(ii) First time the alleged abuse occurred. When is the first time you remember this happening?

(iii) Threats that were made.

(iv) Nature of the assault, *e.g.* anal, vaginal and/or oral penetration. What area of your body did you say was touched or hurt? (The child may not know the site of penetration but may be able to indicate by pointing. This is an indication to examine both genital and anal regions in all cases.)

(v) Whether or not the child noticed any injuries or complained of pain.

(vi) Vaginal or anal pain, bleeding and/or discharge following the event. Do you have any pain in your bottom or genital area? Is there any blood in your panties or in the toilet? (Use whatever term is culturally acceptable or commonly used for these parts of the anatomy.)

(vii) Any difficulty or pain with voiding or defecating. Does it hurt when you go to the bathroom? (indication to examine both genital and anal regions in all cases.)

(viii) Any urinary or fecal incontinence.

(ix) Whether or not the child noticed any injuries or complained of pain.

(x) In case of children, illustrative books, body charts or a doll can be used if available, to elicit the history of the assault. When it is difficult to elicit history from a child, please call an expert.

3.7 When performing the head-to-toe examination of children, the following points are particularly noteworthy:

(i) Record the height and weight of the child (neglect may co-exist with sexual abuse). Note any bruises, burns, scars or rashes on the skin. Carefully describe the size, location, pattern and colour of any such injuries.

(ii) Check for any signs that force and/or restraints were used, particularly around the neck and in the extremities.

(iii) Record the child's sexual development stage and check the breasts for signs of injury.

(iv) If the survivor is menstruating at the time of examination then a second examination is required on a later date in order to record the injuries clearly.

(v) Some amount of evidence is lost because of menstruation. Hence it is important to record whether the survivor was menstruating at the time of assault/examination.

(vi) The same applies to bathing, douching, defecating, urinating and use of spermicide after the assault.

3.8 Role of medical professionals as expert witnesses.— Deciding cases of child sexual abuse would be much easier if it left clear-cut physical evidence. Unfortunately, child sexual abuse often leaves no such evidence. Child sexual abuse is often exceedingly difficult to prove. It usually occurs in secret, often over a prolonged period of time, and does not always leave physical marks; in addition to this, the child is usually the only eyewitness. While many children are capable witnesses, some cannot give conclusive testimony, and consequently, children's testimony is sometimes ineffective. In such cases, the testimony of an expert medical witness can be useful. Physicians can provide opinion

testimony that is based upon the child's history, statements, and medical examination, even if the physician's examination of the child reveals no concrete physical evidence supportive of the child's allegations.

(i) Courts in India in their judgments described an expert as a person who has acquired special knowledge, skill or experience in any art, trade or profession. Experts have knowledge, skill, experience, or training concerning a particular subject matter that is generally beyond the knowledge of the average person. Such knowledge may have been obtained by practice, observation or careful study. The expert thus operates in a field beyond the range of common knowledge.

(ii) Expert evidence is covered under sections 45-51 of Indian Evidence Act. The subjects of expert testimony mentioned by the section are foreign law, science, art and the identity of handwriting or finger impressions.

(iii) In general, whether or not the testimony of an expert will be useful in any given case is almost always left to the discretion of the trial judge before whom the testimony is proffered. However, even where the court has some degree of knowledge or familiarity with the subject, an expert's testimony may be valuable to add insight and depth its understanding of the matter, or to educate them as to commonly held prejudices and misconceptions which might negatively impact upon an impartial and just decision.

(iv) In general, the opinions of medical professionals are admissible upon questions such as insanity, the causes of diseases, the nature of the injuries, the weapons which might have been used to cause injuries or death, medicines, poisons, the conditions of gestation, etc. In the case of questions pertaining to age determination, positive evidence furnished by birth register, by members of the family, with regard to the age, will have preference over the opinion of the doctor: but, if the evidence is wholly unsatisfactory, and if the ossification test in the case is complete, such a test can be accepted as a surer ground for determination of age.

(v) In their testimony regarding a forensic examination, medical professionals typically describe the process of examining the victim, the physical findings that were observed, and their

interpretation. It is important to remember that the medical professional cannot be asked to testify to "diagnose" sexual abuse. The doctor cannot make any definitive conclusions regarding the degree of force used by the abuser or whether the victim consented to any sexual activity. What he/she can appropriately conclude is whether there is evidence of sexual contact and/or recent trauma. He/she can state whether the medical history and examination are consistent with sexual abuse.

(vi) In many child abuse cases, experts have firsthand knowledge of the child because the expert treated or examined the child. However, an expert may be called upon to render an opinion concerning a child without personally examining the child.

(vii) However, it is important to remember that doctors are rarely expert in interviewing, and often assume the truth of what the patient tells them. The testimony is presented as if the doctor's opinion is based on physical findings when it is not. It is often largely or wholly based on statements made, a far different and less scientific basis than objective findings upon examination.

(viii) In addition to this, opinions may be sought from mental health experts as to the psychological effects of child sexual abuse, such as PTSD and Child Sexual Abuse Accommodation Syndrome.

(ix) It is for the legal representative who proposes the use of expert testimony to establish his/her credentials, preferably listing his/her formal qualifications. The adequacy of the qualification of the expert and the admissibility of his/her testimony are within the discretion of the Special Court.

(x) Before giving evidence the expert will usually have prepared a report, either assessing one or more parties to the case or assessing other experts' reports. His/her report should be reliable on the basis of the following criteria:

(a) It should provide a context in layman's terms from which to understand the basis of his/her opinion.

(b) It should be clear when the expert is stating corroborated fact and when he/she is merely repeating what he/she has been told by the alleged offender. Assertions which are based entirely on the alleged offender's perception are likely to be misleading.

(c) The expert must review the information impartially rather than ignore matters which are inconvenient to his/her conclusions.

(d) The report should avoid restating incidental trivia and give preference to examining and analysing the crucial issues of the case.

(e) The expert should demonstrate knowledge of the process and dynamics of child sexual abuse and help to make sense of the child's and non-abusing parent's experiences and perceptions. Victims and non-abusing partners of offenders often do not act rationally and can appear collusive with the offender, whereas their behaviour results from the control the offender exercises over them. It is useful to have this explained in the expert report.

(f) All professions have their exclusive language, but it is best that the expert present the issues in language that the court, advocate and parties can understand.

(g) The expert must not rely solely on quoted research to support his/her arguments, and should refer to clinical experience as well.

An expert opinion must be premised on a reasonable degree of certainty. The expert cannot speculate or guess. It is clear, however, that an expert need not be absolutely certain about a subject before offering an opinion. All that is required is reasonable clinical certainty.

It is important to remember that while an expert's testimony may be deemed relevant, necessary, reliable, and therefore admissible under the aforementioned guidelines, it is ultimately the prerogative of the judge to determine what weight should be afforded the testimony. No matter how qualified the expert, the court is not bound by an expert's conclusions and can exercise its discretion in this regard, keeping in mind all the other evidence presented to it.

4. *FAQs on medical examination.*— Doctors may be faced with some of these questions from children as well as parents and caregivers:

(i) Why is the medical examination necessary ?

The medical exam is a very important tool in evaluating sexual abuse. The physical examination can identify both new and old injuries, detect sexually transmitted diseases and provide evidence of sexual

contact. If done in a sensitive manner, the examination can answer any questions or concerns the child may have and reassure the child about their well-being and that their body is private. The exam also has evidentiary value in a court of law.

(ii) The last time my child was touched in a sexually inappropriate manner was over a year ago. Is the medical exam still necessary?

Yes. Most children reveal their experience of abuse after a long time has passed, for example, when they are older or feel that they are no longer in danger of being abused again. Some even reveal it accidentally. In such cases, the medical examination can reassure the child about their well-being and address any worried the child may have about the injuries they suffered due to the abuse. Some children may have injuries that healed a long time ago but can be seen with the help of special equipment.

(iii) Is the examination uncomfortable for the child?

No. The examination itself is rarely physically uncomfortable for the child; however, what may cause discomfort is the attitude of the person conducting the examination. For this reason, it is important that all medical health care professionals be trained in conducting medical examinations of children in a sensitive manner. The doctor is expected to explain the procedure to the child and his/ her parents and obtain their consent prior to conducting the examination, as well as answer any questions they may have.

(iv) Can the parent(s) be present while the examination is being conducted ?

Yes. Section 27 of the new POCSO Act, 2012 specifically requires that the examination be conducted in the presence of the child's parents/ guardian or other person in whom the child has trust and confidence.

(v) Is the medical examination of the child conducted in the same manner as an adult female gynecological examination?

(vi) Will the doctor/nurse be able to tell if there was penetration?

- (vii) How is the examination of a boy different from that of a girl?
- (viii) Why can't a family doctor or another doctor known to the child do the examination?
- (ix) Will the child be tested for HIV/STDs?
- (x) Will the doctor/nurse give evidence in court if needed?
- (xi) Will the child have to be sedated for the examination?
- (xii) Where will the medical examination be conducted?
- (xiii) Who will conduct follow-up examinations, in case the child needs treatment for STDs or HIV?
- (xiv) What happens after the medical exam, will the child and his/her parents be allowed to see the report?
- (xv) What about the child's mental health needs?

CHAPTER – 5

PSYCHOLOGISTS AND MENTAL HEALTH EXPERTS

1. *Relevant legal provisions in the Act and Rules and related laws :*

Rule 4(2)(e) : Where an Special Juvenile Police Unit or the local police receives any information under sub-section (1) of section 19 of the Act, they must inform the child and his/her parent or guardian or other person in whom the child has trust and confidence of the availability of support services including counselling, and assist them in contacting the persons who are responsible for providing these services and relief.

Rule 5(4)(v) : Wherever necessary, a referral or consultation for mental or psychological health or other counselling should be made by the medical professional rendering emergency medical care to the child.

Thus, the rules made under the POCSO Act, 2012 provide that the child may be referred for counselling either by the police or by a doctor.

2. *Counsellors :*

2.1 *Role of Counsellors*

The counsellor's duties will include :

- (i) To understand the child's physical and emotional state;
- (ii) To resolve trauma and foster healing and growth;
- (iii) To hear the child's version of the circumstances leading to the concern;
- (iv) To respond appropriately to the child when in crisis;
- (v) To provide counselling, support, and group-based programs to children referred to them;
- (vi) To improve and enhance the child's overall personal and social development, and his/her health and wellbeing; and
- (vii) To facilitate the reintegration of the child into his/her family/community.

2.2 *Who may be appointed as a Counsellor?*

Counselling for children and families at risk is an integral component of the Integrated Child Protection Scheme (ICPS). The ICPS envisages the development of a cadre of counsellors to provide professional counselling services under various components of the scheme. Counselling may be provided under ICPS by any of the following :

- (i) CHILDLINE Service;
- (ii) Counsellors appointed by the District Child Protection Society, who will report to the Legal-cum-Probation Officer and will be responsible for providing counselling support to all children and families coming in contact with the DCPS; and
- (iii) NGOs and other voluntary sector organisations.

In all cases of penetrative sexual assault and all aggravated cases, arrangements should be made as far as possible to ensure that the child is provided counselling support. Where a counsellor is not available within the existing ICPS framework, the State Government may secure the engagement of external counsellors on contract basis.

2.3 Criteria for engagement as Counsellor.— In order to enable the engagement of counsellors from outside the ICPS, including senior counsellors for the more aggravated cases, the DCPU in each district shall maintain a list of persons who may be appointed as counsellors to assist the child. These could include mental health professionals employed by Government or private hospitals and institutions, as well as NGOs and private practitioners outside the ICPS mechanism, chosen on the basis of objective criteria.

As indicative criteria, for any counsellor engaged to provide services to a sexually abused child, a graduate degree, preferably in Sociology/Psychology (Child Psychology)/Social Work is a must. In addition to this, at least 2 to 3 years of work experience related to providing counselling services to children in need of care and protection as well as their parents and families and training on handling cases of child sexual abuse is essential in order to ensure that the child receives counselling from those qualified for and experienced in providing it.

2.4 Counselling Services under the Integrated Child Protection Scheme: Training of personnel.— Counselling can be difficult for children because of the nature of being a child and the difficulty in relating to an adult, especially an adult that they don't know. Counselling for abused children therefore requires that the counsellor is trained in the subject and understands how children communicate. The ICPS therefore provides that only trained professionals provide services (including counselling) to children.

If untrained persons are holding these posts, the State Government or the Officer-in-charge should provide for in-service training to them. The State Government may take the help of NIPPCD, National Institute of Social Defence (NISD), NIMHANS and recognised schools/institutes of social work or expert bodies/institutions specialised in child related issues for organizing specialised training programmes for different categories of personnel. The training programmes should include issues relating to child rights, child psychology, handling children sensitively, counselling, life skills training, dealing with problem behaviour, child sexual abuse and its impact, child development, trauma, neurobiology, handling disclosure and basic counselling skills. These training programmes could be arranged as :

(i) Orientation and training for newly-recruited staff and in-service training for existing staff.

(ii) Refresher training courses for every staff member at least once in every two years.

(iii) Participation in periodic staff conferences, seminars and workshops with the various other stakeholders or functionaries of the Juvenile Justice System and the State Government at various levels.

2.5 Payment to Counsellors.— Counsellors employed by the DCPU are entitled to receive their monthly salaries at the pre-determined rates. They will be performing their duties in relation to the POCSO Act, 2012 in the scope of their work and will not receive additional remuneration for this work, except reimbursement of local travel costs and other miscellaneous expenditure.

Counsellors engaged externally may be remunerated from the Fund constituted by the State Government under section 61 of the Juvenile Justice Act, or under any other fund set up by the State Government for this purpose. The rates for payment shall be as fixed by the DCPU.

2.6 Basic principles of counselling young children.— Sexually abused children are traumatised and vulnerable. They may show certain identifiable behavioural signs of abuse, but often, these are not immediately obvious and will reveal themselves only over a period of time. As a counsellor, one must be aware of the signs of sexual abuse. Children often find it very difficult to disclose sexual abuse, due to the following reasons :

3. Why a child may not disclose abuse

Reasons include but are not limited to :

- (i) He/she is embarrassed;
- (ii) He/ she does not know if what is happening to them is normal or not;
- (iii) He/ she does not have the words to speak out;
- (iv) The abuser is a known person and the child does not want to get them in trouble;

- (v) The abuser told the child to keep it a secret;
- (vi) The child is afraid that no one will believe him/ her;
- (vii) The abuser bribes or threatens the child; and
- (viii) He/she thinks you already know.

Being aware of these signs would alert the counsellor to the possibility of sexual abuse.

4. *Indicators*

4.1 Behavioural indicators :

- (i) Abrupt changes in behaviour such as self-harm, talks of suicide or attempt to suicide, poor impulse control etc.
- (ii) Reluctance to go home.
- (iii) Sexualised behaviour or acting out sexually.
- (iv) Low self-esteem.
- (v) Wearing many layers of clothing regardless of the weather.
- (vi) Recurrent nightmares or disturbed sleep patterns and fear of the dark.
- (vii) Regression to more infantile behaviour like bed-wetting, thumb-sucking or excessive crying.
- (viii) Poor peer relationships.
- (ix) Eating disturbances.
- (x) Negative coping skills, such as substance abuse and/ or self-harm.
- (xi) An increase in irritability or temper tantrums.
- (xii) Fears of a particular person or object.
- (xiii) Aggression towards others.
- (xiv) Poor school performance.

- (xv) Knowing more about sexual behaviour than is expected of a child of that age :
 - (a) child may hate own genitals or demand privacy in an aggressive manner.
 - (b) child may think of all relationships in a sexual manner.
 - (c) child may dislike being his/her own gender.
 - (d) child may use inappropriate language continuously in his or her vocabulary or may use socially unacceptable slang.
 - (e) child may carry out sexualised play (simulating sex with other children).
 - (f) Unwarranted curiosity towards sexual act like visiting adult sites or watching adult images or content.

4.2. *Physical Indicators:*

- (i) Sexually transmitted diseases;
- (ii) Pregnancy;
- (iii) Complaints of pain or itching in the genital area;
- (iv) Difficulty in walking or sitting;
- (v) Repeated unusual injuries;
- (vi) Pain during elimination; and
- (vii) Frequent yeast infections.

5. *Effects of child sexual abuse.*— Counsellors have a very important role to play in limiting the short-term and long-term effect of child sexual abuse. These are as below:

- (i) Feeling of powerlessness;
- (ii) Anger;
- (iii) Anxiety;
- (iv) Fear;

- (v) Phobias;
- (vi) Nightmares;
- (vii) Difficulty concentrating;
- (viii) Flashbacks of the events;
- (ix) Fear of confronting the offender;
- (x) Loss of self-esteem and confidence; and
- (xi) Feelings of guilt.

If childhood sexual abuse is not treated, long-term symptoms can go on through adulthood. These may include :

- (i) PTSD and anxiety
- (ii) Depression and thoughts of suicide
- (iii) Sexual anxiety and disorders, including having too many or unsafe sexual partners
- (iv) Difficulty setting safe limits with others (e.g., saying no to people) and relationship problems
- (v) Poor body image and low self-esteem
- (vi) Unhealthy behaviours, such as alcohol, drugs, self-harm, or eating problems. These behaviours are often used to try to hide painful emotions related to the abuse
- (vii) Issues in maintaining relationships

6. *The language of the child* : (i) The first step in counselling a sexually abused child is to establish a trusting relationship with the child, so that the child can communicate freely with the counsellor. Thus, the counsellor would need to speak to the child in its own language, taking into account his or her age, maturity and emotional state.

(ii) It is important to explain the purpose of counselling to the child and to explain that it will include discussion about the abuse suffered by the child. This will help the child to be prepared for the discussion, and prevent him or her from withdrawing when an uncomfortable topic comes up.

(iii) Allow for free flow of talk without too many intensive questions. Don't begin questioning the child immediately about his/her problem.

(iv) Try not to be intimidating authoritarian or too patronizing. Don't control the child's conversation - follow the child's lead.

(v) Children often lack the vocabulary to discuss sexual acts, and it is important for the counsellor to be aware of the child's sensitivities and difficulties before talking about sexual issues with him or her. To gain this insight, all relevant legal, medical and family history of the case should be collected from the Probation Officer or parents/guardian.

(vi) While the police or other investigative agency may have already obtained a disclosure from the child about the main incident of abuse, the child's sessions with the counsellor may reveal new incidents. It is thus advisable to get the counsellor involved as early as possible into the pre-trial process.

7. *How to respond if the child discloses abuse* : (i) Believe him or her. The most important thing is to believe the child. Children rarely lie about abuse; what is more common is a child denying that abuse happened when it did. Tell the child you believe him/her.

(ii) Don't be emotionally overwhelmed and try to remain composed while talking to the child.

(iii) Do not interrogate the child. It can be traumatic for the child to repeat his/her story numerous times. Leave the questioning to the legal and police personnel.

(iv) Reassure the child that the abuse is not their fault. The child's greatest fear is that he or she is responsible for the abuse. Be sure to make it clear that what happened is not a result of anything he/she did or did not do. This is particularly important when the accused person is a member of the child's family, such as his or her father, and the child feels guilty at having put that person to trouble. Reassure them that prompt and adequate steps will be taken to stop the abuse.

(v) Do not make promises you can't keep. Do not make promises such as the child will never have to see the abuser again, that nothing will change, or other such promises.

(vi) Believing and supporting the child are two of the best actions to start the healing process. Appropriate and helpful responses to disclosures are as follows:

- (a) "I am glad you told me, thank you for trusting me."
- (b) "You are very brave and did the right thing."
- (c) "It wasn't your fault."

The counsellor should be aware that the effects of child sexual abuse are long-term and can change the world view and the course of life of the child. The first step in the healing process is for the child to talk about the abuse, and it is the counsellor's duty to facilitate this; however, the process of recovery may be long and the child will have other needs that the counsellor can attend to. These include:

- (i) Rapport building;
- (ii) Working on the feelings of the child;
- (iii) Psychological Education on safe and unsafe touches, feelings, thoughts and behaviour, safer coping techniques;
- (iv) Helping the child to understand the abuse was not their fault;
- (v) Helping the child to develop or regain their self-confidence;
- (vi) Provide sex education;
- (vii) Encourage appropriate social behaviour; and
- (viii) Help the child to identify people who can form a supportive social environment around him or her.

The counsellor is therefore a very important tool for the child in rebuilding his or her life after he has been sexually abused.

8. *Counselling for families* : Having to cope with the abuse of their own child may be the most difficult challenge of a parent's life. If the parent(s) can get counselling for themselves through this difficult period, it will also help the child with his/her counselling.

8.1 *Experience of parents after a child sexual abuse disclosure :*

When parents first find out about their children being sexually abused, they will experience a wide range of feelings. They may experience denial, anger, betrayal, confusion and disbelief. Parents often tend to blame themselves for not paying attention to their child's behaviours or complaints earlier on. They may feel that they have failed as parents and they didn't protect their children. For some parents they may wonder why their children didn't disclose to them directly but to others. Some parents also become angry at themselves or at their spouses for not supporting the family. In addition to a wide range of emotional experiences, parents may also experience insomnia, change of appetite or other physical complaints.

Some parents also feel conflicting emotions, especially if the accused perpetrator is someone they have trusted, a close friend or a family member. There may be feelings of loyalty and love towards the offending person as well as towards the victim. Family members may choose sides with some believing it happened and others refusing to believe it could have. Parents may disagree about how to handle the situation.

If the offender is the spouse or partner of the parent, what the relationship is like can strongly influence the parent's actions once he/she learns of the abuse. If feelings toward the offending spouse/partner are positive or mixed, decisions about staying together, or to divorce or separate will be more difficult to sort through.

Parents may be faced with making decisions about whether to continue the relationship with the offender, how to deal with contact between the offender and the child, and re-establishing trust and communication in the family.

The feelings a parent has toward the offender may affect a parent's ability to believe in and support the child. When offenders deny or minimize the abuse or blame the child the situation gets very complicated. If a parent doesn't believe a child who has been abused and supports the offender, there can be severe damage to the child. The child will feel betrayed by the parent as well as the offender. What every child victim needs is to be believed and to know that he or she is not at

fault. When the parent is able to support and stand up for the child, the child has an excellent chance of recovering from the effects of sexual abuse. It is very important to get help and support for their feelings because parents reactions make a big difference in children's recovery. Families are children's most important resource for recovery.

8.2 *Coping after the child's sexual abuse disclosure :*

(i) The parents should be advised to try not to completely immerse themselves in supporting or worrying about their child. No matter how much they love and care about their family, they also need to consciously set aside time for their own needs.

(ii) As they are dealing with the police investigation, social worker's interview or other professionals regarding their child's sexual abuse disclosure, it is especially important for them to take care of themselves physically and emotionally.

(iii) Their child needs their care and their attention during this time of confusion and overwhelming circumstances. If they are experiencing insomnia or depression, they may need to talk to their doctor about treatment or seek professional counselling.

(iv) They should be advised to find diversions that will lighten their emotional load and recharge their ability to give support. If they have a spouse, partner or other children, they should spend time with them. They should demonstrate to their child that there is life beyond what has happened. This will also aid the child's recovery process and help the child go on with his or her own life.

(v) They may find that they feel over-protective towards their child and do not want to let them out of their sight. However, it is important not to restrict the child's play for their own peace of mind - the child will feel they are punishing him/her by not letting him/her play with friends. Playing is also a kind of therapy.

(vi) The parents should allow the child, as far as possible, to carry on with his/her normal activities and encourage the child to participate in any activities available either at school or in the community. This will divert the child's attention and help him/ her to understand that things will eventually get better.

(vii) As they try to deal with the sexual abuse of their child, they may start to piece together many clues and indicators of the child abuse that went unnoticed earlier. This information will help them to understand what their child has gone through and the impact on him or her.

(viii) However, it may also increase their sense of guilt and they may blame themselves for not acting earlier. It is important for such a parent to be told that no parent/caregiver can be everywhere all the time. Instead of tormenting themselves, they should share with an understanding family member or friend about their feelings and emotions; this will help them to move on.

(ix) Where the abuser is not a parent, it is crucial for both parents to support each other during this critical and painful time. Blaming each other for not protecting their child will not help solve the problem. Open or secret blaming on one of the parents will further impact their child's sense of safety and sense of security. Their child has already been violated and has experienced lack of safety. Therefore, it is critical for both parents to focus on supporting the child as a team. A crisis like this may put a strain on their relationship, especially a relationship that has already been shaky or difficult.

(x) They naturally want to comfort, heal and protect their child in the aftermath of a traumatic experience, but their own physical and emotional energy isn't limitless. If they try to give too much of themselves throughout the recovery process, they may find themselves resenting or withdrawing just when their child needs them most. No one person – not even a parent – can give a child all the support they need, so they should help their child to spend, quality time with other people who care about them and can support in their recovery.

(xi) Seeking professional counselling is important especially if their child's or their behavioural and emotional reactions do not subside. Seeking professional help earlier on can be very helpful. Talk to a counsellor or a therapist for a few sessions to debrief and process their emotions regarding the child's sexual abuse incident as well as their confusion. A trained professional will be able to facilitate a healing and closure for them. It is important for them to be able to find strengths to support and reassure their child after these traumatic experiences.

8.3 *Protecting the child from further harm :*

Here are some ways to help protect their child from further abuse and minimize the emotional trauma their child may experience:

(i) Prevent contact between their child and the offender until an investigation has taken place. Explain to their child that he/she should tell them immediately if the offender attempts to touch or bother them again in any way.

(ii) Do not talk to the offender in front of the child.

(iii) Continue to believe their child and do not blame him/her for what happened. Give their child support and reassurance that he/she is okay and safe.

(iv) Respond to concerns or feelings their child expresses about sexual abuse calmly. Listen to their child but do not ask a lot of questions.

(v) Respect their child's privacy by not telling a lot of people, and make sure that other people who know, don't bring the subject up to their child. Listen to their child, but don't ask for information on personal safety or details about the abuse. Let the professionals do the interviewing to find out the details. A legal case can be negatively affected if the child has been questioned by non-professionals.

(vi) Try to follow the regular routine around the home; maintain the usual bedtimes, chores and rules.

(vii) Let the child's brothers and sisters know that something has happened to the child and that he or she is safe now and will be protected. Make sure that all children in the family are given enough information on personal safety so to be able to protect themselves from the offender without discussing the details of the incident.

(viii) Talk about their feelings with someone they trust - a friend, relative, or counsellor. It is best not to discuss their worries in front of, or with, their children.

CHAPTER – 6

SOCIAL WORKERS AND SUPPORT PERSONS1. *Social worker: Inquiry–*

As per section 19(6) of the POCSO Act, 2012 where an F.I.R. has been registered before the Special Juvenile Police Unit (SJPU) or local police station in respect of any offence committed against a child under the said Act, the case should be reported by the SJPU or the local police to the Child Welfare Committee (CWC) within 24 hours.

Additionally, as per rule 4(3), a child is to be produced before the CWC in the following three situations:

- (i) There is a reasonable apprehension that the offence has been committed or attempted or is likely to be committed by a person living in the same or shared household with the child, or
- (ii) The child is living in a child care institution and is without parental support, or
- (iii) The child is found to be without any home and parental support.

Where a child is produced before the CWC in the three situations described above, the relevant CWC must proceed, in accordance with its powers under sub-section (1) of section 31 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (JJ Act), to make a determination within three days, either on its own or with the assistance of a Social Worker/Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC, as to whether the child needs to be taken out of the physical custody of his/her family or shared household and placed in a Children's Home or a Shelter Home.

As per rule 4(5) of the POCSO Rules, 2012, the CWC should take into account any preference or opinion expressed by the child on the matter together with best interest of the child. Also, prior to making such determination, an inquiry should be conducted in such a way that the child is not unnecessarily exposed to injury or inconvenience.

This inquiry may therefore be conducted either by the CWC itself or with the assistance of a Social Worker/Probation Officer/Non-Governmental Organisation (NGO)/any other person found fit by the

CWC to be appointed for this purpose. Where a support person has been appointed for the child, the same person may be engaged to conduct the inquiry under rule 4(5) to assist the CWC in its inquiry.

The Social Worker/Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC may prepare his/her report after interviewing the child and other affected persons to determine the following:

- (i) the child's physical and emotional state;
- (ii) whether the child needs any urgent care such as medical/mental health intervention, shelter, etc.;
- (iii) to hear the child's version of the circumstances leading to the concern;
- (iv) to get an insight into the child's relationship with his/her parents or guardian or other person in whom the child has trust and confidence;
- (v) to support the child to participate in decisions affecting him according to his/her age and level of maturity; and

2. *Guidelines for interviewing the child and other affected and relevant persons.*—The interviewer should follow the guidelines in Chapter 1 in his/ her interaction with the child.

Where the child has been found to be without family support, the interviewer should ask the child to confirm whether she/he has a relative or other person in whom she/he has trust and confidence to support him/her. In this case, attempt should be made to contact such person and inquire whether she/he is fit and willing to assume charge of the child before a decision is taken to institutionalise the child.

Where the child had been living in a child care institution prior to the abuse, and the abuse is alleged to have occurred within that institution, the interviewer must confirm this with the child. In such cases, a recommendation would then have to be made to transfer the child to another institution.

Where the alleged offender is a member of the child's family or shared household, the interviewer should consider interviewing the parent or guardian or other family member of the child, in the child's

absence. The interviewer should however convey to all parties that no assumptions have been made about whether abuse has occurred and whether it occurred at the hands of the alleged offender.

An interview with the child could result in sharing of confidential information. Hence, it should be conducted in a place where the child is assured of privacy.

The interviewer should also consider other children (boys as well as girls) that may have had contact with the alleged perpetrator and recommend to keep the alleged perpetrator away from such children. For example, there may be an indication to examine the child's siblings or other children living in the child care institution where the child was abused.

After the interview, the following details must be recorded:

- (i) A summary sheet containing family details;
- (ii) A record of all enquiries made about the case and the response obtained;
- (iii) A record of all contacts between the worker and the child and his or her parents/caregivers;
- (iv) A record of all contact between the worker and other professionals, including working arrangements and agreements;
- (v) A summary, to be updated regularly, on recent events and their significance;
- (vi) A report of all Court proceedings, reviews and any other meetings, as well as any other relevant documentation;
- (vii) Details of assessment and outcomes;
- (viii) A record of any decisions made;
- (ix) A copy of any child protection plans;
- (x) A copy of all correspondence about the case.

2.1 Social Worker's/Probation Officer's/Non-Governmental Organization's (NGO)/any other person's (found fit by the CWC) recommendation and further action by CWC : Where the Social Worker/Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC concludes, following his/her

interaction with the child and other affected persons that the child needs to be removed from the physical custody of his/her parents/guardian/care giver, she/he should make a recommendation to the CWC to this effect.

Upon receiving the report of the Social worker/ Probation Officer/ Non-Governmental Organisation (NGO)/any other person found fit by the CWC, the CWC has to make a determination as to whether the child must be removed from the custody of his/her parents/guardian/ care giver and placed in a Children's Home or Shelter Home. In making this determination, the CWC shall take into account any preference or opinion expressed by the child on the matter, together with all relevant factors that may have a bearing on the best interests of the child, having regard to the considerations referred to in rule 4(5) of POCSO Rules, 2012. However, the CWC shall as far as possible avoid repeatedly questioning or interviewing the child.

3. *Support persons* : Relevant provision–

The child must have access to support services which provide information, emotional and psychological support and practical assistance which are often crucial to the recovery of the child and help him to cope with the aftermath of the crime and with the strain of any criminal proceedings.

The Protection of Children from Sexual Offences Act, 2012 introduces the concept of a support person, to provide support to the child through the pre-trial and trial process. The support person is thus, in a way, a guardian *ad litem* for a child. He can be a useful intermediary between the authorities and the child.

Rule 4(7) of the POCSO Rules states :

The Child Welfare Committee, on receiving a report under sub-section (6) of section 19 of the Act or on the basis of its assessment under sub-rule (5), and with the consent of the child and his/her parent or guardian or other person in whom the child has trust and confidence, may provide a support person to render assistance to the child through the process of investigation and trial. Such support person may be a person or organisation working in the field of child rights or child protection, or an official of a children's home or shelter home having custody of the child, or a person employed by the DCPU:

Provided that nothing in these rules shall prevent the child and his/her parents or guardian or other person in whom the child has trust and confidence from seeking the assistance of any person or organisation for proceedings under the Act.

Thus, the support person may be appointed either by the Child Welfare Committee or by the child and his/her family themselves.

Rule 4(2) (e) of the POCSO Rules, 2012 states that it shall be the duty of the police official who receives a report of an offence to inform the child and his/her parent or guardian or other person in whom the child has trust and confidence of the availability of support services including counselling, and assist them in contacting the persons who are responsible for providing these services and relief. The police official should therefore inform the child and his/her parent, guardian or other person in whom the child has trust and confidence of the provision for engaging a support person to help him and his/her family through the trial and pre-trial process, and assist them in accessing these services.

Under rule 4 (9) and (10) of the POCSO Rules, 2012 the Special Court is to be informed by the SJPU or local police station about the appointment and termination of support person. This reflects that the support person also has a role to play before the Special Court. The support person may be called upon by the Special Court to ascertain information about the child, such as whether the child is in a safe and protective environment, preferences of the child in a given situation. As the support person is required to assist the child through the entire process, she/he should also be present each time the child is required to attend before the Special Court.

3.1 *List of support persons.*— The DCPU and the CWC shall maintain a list of persons/ NGOs who may be appointed as support person to assist the child. This could include the following :

- (i) Persons working in the field of child rights/ child protection.
- (ii) NGO or other organisation working in the field of child rights/child protection, including childline and its support organisations.
- (iii) Officials of a children's home or shelter home.

- (iv) Persons employed by the DCPU, including :
 - (a) Legal-*cum*-Probation Officer
 - (b) Social worker
 - (c) Outreach worker
 - (d) Counsellor

The CWC may appoint any professional or any other person as a support person in the best interest of a particular child. However, in such cases, the CWC must ensure that there is no conflict of interest in the appointment of the support person, and must also give its reasons in writing for having appointed as support person such professional or person.

Rule 4(10) of the POCSO Rules, 2012 provides that the services of a support person may be terminated by the CWC upon request by the child or his/her parent or guardian or person in whom the child has trust and confidence, and that the child or person requesting the termination is not required to give any reason for this request.

Thus, where the child or his/her parent or guardian or person in whom the child has trust and confidence have reason to believe that the support person is not acting in the best interest of the child, they may request his/her removal. In such a case, a new support person may be provided by CWC with the consent of the child and his/her parents or guardian or other person in whom the child has trust and confidence.

3.2 Training of support persons : The support person should fulfil the requirements of having basic training in communicating with and assisting children of different ages and backgrounds to prevent the risks of re- victimization and secondary victimization. Further, the support person must have an understanding of the legal and Court procedures involved in the conduct of a case under the POCSO Act, 2012. He has to be able to render concrete support to the child and facilitate his/her active participation, while not disturbing the proceedings by his/her presence.

To ensure this, the DCPU must arrange for periodic training modules to impart this knowledge to those registered with it or with the CWC for engagement as support persons.

3.3 *Payment to support person* : Officials of Children's Homes and Shelter Homes and persons employed by the DCPU are entitled to receive their monthly salaries at the pre-determined rates. They will be performing the functions of support persons as part of the scope of their work and will not receive additional remuneration for this work, except reimbursement of local travel costs and other miscellaneous expenditure.

Child rights/child protection experts and NGOs may be remunerated from the Fund constituted by the State Government under Section 61 of the JJ Act, or under any other State Government Fund at rates set up by the State Government including DCPU for this purpose.

The duties and role of a support person are given under Rule 4 of the POCSO Rules, 2012. The support person is instrumental in maintaining the link between the child and law enforcement authorities by providing information to the child and his/her family about the progress of the case. Further, the successful rehabilitation of the child is dependent on the degree of sensitivity and level of understanding with which the support persons deals with him the child while addressing his/her problems.

(i) Establishing trust with the support person is important and may only happen over a period of time. It is therefore advisable to appoint a support person at an early stage and to have the same person accompany the child throughout the whole proceedings. The more the child feels familiar with his/her support person, the more he will feel at ease.

(ii) It would also be useful to this end if the selection of the support person is done via a process involving the child.

(iii) Decisions on when to carry out any interviews should as far as possible take account of the child's situation and needs.

(iv) It is important to prevent secondary victimisation by ensuring that the child is interviewed as early as possible. Interaction with authorities should be as easy as possible, whilst limiting the number of unnecessary interactions the child has with them.

(v) Appropriate steps should be taken to ensure that the child does not have to come into contact with accused or suspected persons.

4. *Child Protection Plan (CPP)* : As stated in rule 4(7) of the POCSO Rules, 2012 the Child Welfare Committee, on receiving a report under sub-section (6) of section 19 of the Act or on the basis of its assessment under sub-rule (5) and with the consent of the child and his/her parent or guardian or other person in whom the child has trust and confidence, may provide a support person to render assistance to the child through the process of investigation and trial. Such support person may be a person or organisation working in the field of child rights or child protection, or an official of a children's home or shelter home having custody of the child, or a person employed by the DCPU.

After the support person has had an opportunity to interact with the child, the support person should formulate a Child Protection Plan (CPP) in respect of the child. CPP may be submitted to the CWC and can serve as a working tool that should enable the family and professionals to understand what is expected of them and what they can expect of others. The aims of the plan are to safeguard the interests of the child, to support the child's wider family and to care for the child and promote his/her welfare.

In cases where the child is produced before the CWC under Rule 4(3) of the POCSO Rules, 2012 , and an Individual Care Plan (ICP) as defined in Rule 2 (h) of the Juvenile Justice (Care and Protection of Children) Rules, 2007⁴, is being developed for the child, the above mentioned CPP would supplement such Individual Care Plan (ICP).

⁴ Rule 2 (h) : "individual care plan" is a comprehensive development plan for a juvenile or child based on age specific and gender specific needs and the case history of the juvenile or child, prepared in consultation with the juvenile or child, in order to restore the juvenile's or child's self-esteem, dignity and self-worth and nurture him into a responsible citizen and accordingly the plan shall address the following needs of a juvenile or a child :

- (i) Health needs;
- (ii) Emotional and psychological needs;
- (iii) Educational and training needs;
- (iv) Leisure, creativity and play;
- (v) Attachments and relationships;
- (vi) Protection from all kinds of abuse, neglect and maltreatment;
- (vii) Social mainstreaming; and
- (viii) Follow-up post release and restoration.

The basic components of the CPP are :

- (i) Identification of current and potential sources of risk to the child, including the position of the abuser;
- (ii) Identification of strategies to protect the child and reduce the risks over the pre-trial and trial period;
- (iii) Identification of protective aspects of the child's situation, which may need to be strengthened and developed;
- (v) Consultation and negotiation with the child and his/her parents/guardians/caregivers on the content and feasibility of the plan;
- (vi) Communication of information between all the parties involved;
- (vii) Identification of resources necessary to carry out the plan, including family support and treatment services where required;
- (viii) Consideration of the position of the abuser alleged offender and potential risks to the child from this front;
- (ix) Need for counselling the child and his/her parents/guardians/care givers; and
- (x) Need for rehabilitation and compensation.

5. Code of Conduct for Support Persons and Social Workers/ Probation Officer/Non- Governmental Organization (NGO)/Any other person found fit by the CWC : The primary responsibility of the Support Person or the Social Worker/Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC is to protect the child and the child's interests during contact with the criminal justice system and to promote the well-being of the child. In general, the child's interests are the paramount consideration, but, the Support Person or Social Worker's/ Probation Officer's/Non- Governmental Organization's (NGO)/any other person's (found fit by the CWC) responsibility to the larger society or in the case of specific legal obligations may on limited occasions take precedence over the loyalty owed the child, and the child should be so advised.

For instance, where a worker in an NGO comes to know that a child who has come to him/her has been sexually abused, she/he is required by the POCSO Act, 2012 to report this to the police, even in a case where the child expresses his/her reluctance in doing so. In such cases, the child and his/her family should be counselled and made to understand the obligation to report.

(i) Social workers/Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC and support persons should provide their services to the child only in the context of a professional relationship based, when appropriate, on valid informed consent. Where the social worker or support person is being appointed through the CWC, the appointment should be made, as far as possible with the involvement of the child.

(ii) Social workers/Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC and support persons should use clear and understandable language to inform the child of the purpose of their services, risks related to their services, reasonable alternatives, the child's right to refuse or withdraw consent, and the stage up to which she will be available to support the child. The child should also be given the opportunity to ask questions and clarify doubts.

(iii) In cases where the child is not literate or has difficulty in understanding the Social worker/Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC or support person, such person should take steps and seek assistance to ensure the child's comprehension. This may include providing the child with a detailed verbal explanation or arranging for a qualified interpreter or translator whenever possible.

(iv) Social workers/Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC and support persons should provide services and represent themselves as competent only within the boundaries of their education, training, certification, consultation received, supervised experience, or other relevant professional experience.

(v) Social workers/Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC and support persons should be alert to and avoid conflicts of interest that interfere with the exercise of professional discretion and impartial judgment.

A conflict of interest occurs when a social worker's or support person's services to or relationship with the child is compromised, or might be compromised, because of decisions or actions in relation to another child, colleague, him or herself, or some other third party. Potential or actual conflicts of interest are very complex situations for social workers and support persons, or for any professional for that matter. Conflicts of interest can occur in many different contexts. For example, when a support person is appointed by the CWC, and such support person in the case of a child has a family relationship with someone in the child's family, there could be a conflict of interest. In such cases, the social worker or support person should inform the child and the CWC should take reasonable steps to resolve the issue in a manner that makes the child's interests primary and protects the child's interests to the greatest extent possible. In some cases, protecting the child's interests may require termination of the professional relationship with proper referral of the child to another Social Worker/Support Person.

(vi) Social workers/Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC and support persons should not take unfair advantage of any professional relationship or exploit it to further their personal, religious, political, or business interests.

(vii) When Social workers/Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC and support persons provide services to two or more people who have a relationship with each other (for example, couples, family members), social workers should clarify with all parties the nature of social workers professional obligations to the various individuals who are receiving services. Social workers who anticipate a conflict of interest among the individuals receiving services or who anticipate having to perform in potentially conflicting roles should clarify their role with the parties involved and take appropriate action to minimize any conflict of interest.

(viii) Social workers/ Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC and support persons should respect the child's right to privacy. Social workers and support persons should not solicit private information from the child unless it is essential to providing services in the best interest of the child.

(ix) Social workers/Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC and support persons should protect the confidentiality of all information obtained in the course of professional service, except in the discharge of their professional duties. Social workers and support persons may disclose confidential information when appropriate with valid consent from the child or a person legally authorized to consent on behalf of the child and whose interests are not in conflict with that of the child. However, in any case, social workers and support persons should inform the child, to the extent possible, about the disclosure of confidential information and its potential consequences.

(x) Social workers/Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC and support persons should not discuss confidential information in any setting unless privacy can be ensured.

(xi) As provided in Section 23 (2) of POCSO Act, 2012, Social workers/Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC and support persons should not disclose the identity of the child when responding to or interacting with the media unless permitted by the Special Court in the best interest of children with reasons recorded in writing.⁵

(xii) Social workers/Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC and support persons should under no circumstances engage in sexual activities or sexual contact with the child and/ or his/her relatives, whether such contact is consensual or forced.

⁵ **Section 23 (2) :** No reports in any media shall disclose, the identity of the child including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclosure of identity of the child. Provided that for reasons to be recorded in writing, the Special Court, competent to try the case under the Act, may permit such disclosure, if in its opinion such disclosure is in the interest of the child.

(xiii) Further, they should not sexually harass the child. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favours, and other verbal or physical conduct of a sexual nature.

(xiv) Social workers/Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC and support persons should not use derogatory language in their written or verbal communications to or about the child. Social workers should use accurate and respectful language in all communications to and about the child.

(xv) In the event that services are interrupted by factors such as unavailability due to other commitments, relocation, illness, disability or death, the CWC should appoint another suitable Social workers/Probation Officer/Non-Governmental Organization (NGO)/any other person found fit by the CWC or support person as soon as possible.

6. *Role of Non-Governmental Organisations* : Civil society organisations [independent institutions, non-governmental organisations (NGOs) and independent experts] have a positive role to play in the effective implementation of the POCSO Act, 2012 not only in raising public awareness on children's rights and in disseminating a new culture of child-adult relationships, but also in preventing and responding to violence against children by providing active support to reported cases through individual and group counselling and services for rehabilitation of abused children.

6.1 *Relevant legal provisions* : The POCSO Act, 2012 and POCSO Rules, 2012 envisage the involvement of NGOs as support persons for the child, as well as under various other provisions.

(i) Making report to police under section 19(1) of POCSO Act, 2012 - any person, including a member of an NGO, may make a report under this section. Many NGOs work closely with vulnerable children and are in a position to detect child abuse. In many cases, a child may feel more comfortable disclosing abuse to an NGO worker rather than someone in his/her own family. An NGO that has knowledge of the sexual abuse of a child is also bound by the principle of mandatory reporting under section 21(1) of POCSO Act, 2012.

(ii) An NGO worker is included in the term "person of trust and confidence". Thus, such person's presence can be requested at the time of recording a statement before the Police or Magistrate [section 26(1)], medical examination [section 27(3)], and Special Court proceedings [section 33(4) and 37].

(iii) An NGO worker may be appointed as a support person by the CWC to assist the child through the pre-trial and trial procedure (sub-rule 7 of rule 4 of POCSO Rules, 2012). Also, the parents, guardian or other person in whom the child has trust and confidence can approach an NGO to act as a support person (proviso to sub-rule 7 of rule 4 of POCSO Rules, 2012).

(iv) Where an NGO is appointed as the support person, its worker has a right to be informed under sub-rule 11 of rule 4 of POCSO Rules, 2012 of the developments, including the arrest of the accused, applications filed and other court proceedings. The NGO support person in turn communicates this information to the child and his/her family.

(v) The NGO assisting a child can, under rule 7 of POCSO Rules, 2012 file an application for interim and final compensation with the Special Court, as well as with the Legal Services Authority.

It has been noted that victims of child sex abuse, and often their families, prefer to approach and seek advice from an NGO even before they report the matter to the police. Thus, in such situations, the NGO becomes a first point of contact for the child, providing counselling, legal advice and assistance to report the matter.

NGOs must maintain regular contact with the SJPU's and local police stations in their areas of operation. Cooperation between the police and NGOs would facilitate speedy action and reduction of secondary trauma. Where an NGO is approached by a child and/or his/her parents or guardian or other person in whom the child has trust and confidence before the latter approaches the police, the NGO can arrange contact with the police. On the other hand, where the child and/or his/her parents or guardian or other person in whom the child has trust and confidence approach the police on their own, the police can inform and refer them to NGOs that offer support and guidance. This course of action has been recommended for the police in many districts, and is followed in some.

Where an NGO worker is appointed as the designated support person under rule 4 of POCSO Rules, 2012 such person should refer to the guidelines for support persons.

6.2 *General comments* : In addition to these support functions, an NGO can also play a vital role in identifying child sexual abuse concerns. A number of NGOs work with children closely, and are aware of the particular problems and behaviour of each child. The NGO worker is in a position to keep a watch on these children, and to look out for children who are at risk of sexual abuse as well as for signs of sexual abuse even before the child himself may disclose it. In this way, an NGO worker can contribute to the detection of sexual abuse and to the initiation of remedial measures, including judicial processes, in respect of the sexual abuse.

NGOs are the primary channel for awareness-generation and proactive monitoring of Government policies and action. They can contribute to the objectives of the POCSO Act, 2012 by providing technical support to children's institutions in developing Child Protection Policies addressing issues of recruitment, monitoring, complaints mechanism, disciplinary proceedings, and police reporting within their own organisational or institutional setting, and training their staff in this regard. They can also train CWC, lawyers, doctors and other professionals who come in contact with children about the POCSO Act, 2012 and in communicating with children. In addition to this, they can set up education and training programmes for children and youth. They can hold consultations with children and youth to understand their views and perspectives on the issue of child sexual abuse and provide them with opportunities and ways to put recommendations forward as well as opportunities to get involved in implementation.

In addition to this, NGOs can monitor media coverage and ensure sensitive handling of the issue. They can also develop and disseminate position papers and other academic and awareness materials. They can create alliances with other NGOs, business groups, private organisations and the local, national and regional media networks, share best practices, submit articles, involve the press in relevant events and lobby with the media to raise awareness with the general public.

NGOs can thus play a vital role in the implementation of the provisions of the POCSO Act, 2012 and in general in combating the problem of child sexual abuse.

CHAPTER – 7

CHILD DEVELOPMENT EXPERTS

Child development refers to the various stages of physical, social, and psychological growth that occur from birth through young adulthood. A child who has been the victim of a sexual offence is likely to have been severely traumatised, both mentally as well as physically. A child development expert is therefore a person who is trained to work with children with physical or mental disabilities, to evaluate such a child's mental and physical development in the context of that child's experience, and to accordingly facilitate communication with the child.

1. *Legal provisions* : As per the definitions in the rules framed under the POCSO Act, 2012, rule 2(c) states :

"Expert" means a person trained in mental health, medicine, child development or other related discipline, who may be required to facilitate communication with a child whose ability to communicate has been affected by trauma, disability or any other vulnerability.

Section 26(3) states, "the Magistrate or the police officer, as the case may be, may, in the case of a child having a mental or physical disability, seek the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed, to record the statement of the child.

Section 38(2) states, "if a child has a mental or physical disability, the Special Court may take the assistance of a special educator or any person familiar with the manner of communication of the child or an expert in that field, having such qualifications, experience and on payment of such fees as may be prescribed to record the evidence of the child".

Thus, the Act envisages a role for child development experts at the stage of taking evidence from the child and recording his/her statement for the purpose of investigation and trial under the Act. The role of this expert is to facilitate communication between the child and the authority concerned.

Rule 3 provides for the engagement of various experts, including child development experts, for the purposes of the Act. It specifies the qualifications and experience of the experts engaged for facilitating

communication with the child, stating that such an expert shall be qualified in the relevant discipline from a recognized University or an institution recognized by the Rehabilitation Council of India.

The Rehabilitation Council of India runs programmes in various aspects of child development, including working with physically and mentally disabled children. It also recognises courses run by other universities in these disciplines.

Rule 3(6) provides that payment for the services of an expert shall be made by the State Government from the Fund maintained under section 61 of the Juvenile Justice Act, 2000, or from other funds placed at the disposal of the DCPU, at the rates determined by them. It is thus for each DCPU to fix the rates payable to experts in various disciplines. However, it is suggested that these rates be fixed at the level of the State to provide for administrative consistency.

The following is also to be kept in mind while engaging the services of an expert :

(i) Any preference expressed by the child as to the gender of the expert, may be taken into consideration, and where necessary, more than one such person may be engaged in order to facilitate communication with the child - Rule 3(7).

(ii) The interpreter, translator, Special educator, expert, or person familiar with the manner of communication of the child engaged to provide services for the purposes of the Act shall be unbiased and impartial and shall disclose any real or perceived conflict of interest. He shall render a complete and accurate interpretation or translation without any additions or omissions, in accordance with section 282 of the Code of Criminal Procedure, 1973 - Rule 3(8).

(iii) In proceedings under section 38, it is for the Special Court to ensure that there is no conflict of interest in engaging a particular expert to provide services under the Act - Rule 3(9).

(iv) Any expert appointed under the provisions of the Act or its rules shall be bound by the rules of confidentiality, as described under section 127 read with section 126 of the Indian Evidence Act, 1872 - Rule 3(10).

2. *General comments* : The dynamics of child sexual abuse are such that often, children rarely disclose sexual abuse immediately after the event. Moreover, disclosure tends to be a process rather than a single episode and is often initiated following a physical complaint or a change in behaviour.

In such a situation, when the child finally discloses abuse, and a report is filed under the POCSO Act, 2012 more information will have to be gathered so that the child's statement may be recorded.

Information so obtained will become part of the evidence.

However, given the experience that the child has gone through, he is likely to be mentally traumatised and possibly physically affected by the abuse. Very often, law enforcement officers interview children with adult interrogation techniques and without an understanding of child language or child development. This compromises the quality of evidence gathered from the child, and consequently, the quality of the investigation and trial that are based on this evidence.

The interviewing of such a child to gather evidence thus demands an understanding of a range of topics, such as the process of disclosure and child-centred developmentally-sensitive interviewing methods, including language and concept formation. A child development expert may therefore have to be involved in the management of this process. The need for a professional with specialized training is identified because interviewing young children in the scope of an investigation is a skill that requires knowledge of child development, an understanding of the psychological impact sexual abuse has on children, and an understanding of police investigative procedures.

Such a person must have knowledge of the dynamics and the consequences of child sexual abuse, an ability to establish rapport with children and adolescents, and a capacity to maintain objectivity in the assessment process. In the case of a child who was disabled/ physically handicapped prior to the abuse, the expert would also need to have specialised knowledge of working with children with that particular type of disability, e.g. visual impairment, etc.

CHAPTER – 8

LEGAL REPRESENTATIVES

1. *Free Legal Aid* : Under section 12(c) of the Legal Services Authorities Act, 1987, every child who has to file or defend a case shall be entitled to legal services under this Act. The POCSO Act, 2012 confirms the right to free legal aid under section 40, providing that the child or his/her family shall be entitled to a legal counsel of their choice, and that where they are unable to afford such counsel, they shall be entitled to receive one from the Legal Services Authority⁶.

In every District, a District Legal Services Authority has been constituted to implement the Legal Services Programmes in the District. The District Legal Services Authority is usually situated in the District Courts Complex in every District and chaired by the District Judge of the respective district.

1.1 *Public Prosecutor*.— The Protection of Children from Sexual Offences Act, 2012 provides, under Section 32 :

32. (1) The State Government shall, by notification in the official gazette, appoint a Special Public Prosecutor for every Special Court for conducting cases only under the provisions of this Act.

(2) A person shall be eligible to be appointed as a Special Public Prosecutor under subsection (1) only if he had been in practice for not less than seven years as an advocate.

(3) Every person appointed as a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and provision of that Code shall have effect accordingly.

⁶ **Section 40** : Subject to the proviso to section 301 of the Code of Criminal Procedure, 1973 the family or the guardian of the child shall be entitled to the assistance of a legal counsel of their choice for any offence under this Act: Provided that if the family or the guardian of the child are unable to afford a legal counsel, the Legal Services Authority shall provide a lawyer to them.

1.2. *Child-friendly procedures* : The Act provides for child-friendly pre-trial and trial procedures to minimise the trauma felt by child victims and to eliminate the possibility of revictimisation at the time of trial. The child-friendly pre-trial procedures cast duties on the police and are to be implemented at the time of reporting of offences and recording of the child's statement. These are given in detail in Sections 19-26 of the Act.

The child-friendly procedures during the trial are to be followed by the Special Courts set up under Section 28(1) to try offences under the Act. They aim to ensure that the child is protected from intimidation, whether intentional or not. All legal representatives, whether representing the accused or the child, must be aware of these provisions. Given the particular vulnerabilities of children, additional measures should also be made available and utilised even in normal circumstances. The child-friendly trial provisions are detailed in Section 33 - 38 of the Act.

1.3. *Services that may be provided by Legal Aid Authorities* :

(i) *Legal representation* : The abused child should be provided with such care and protection as required by law. Any such action shall be in accordance with the procedures established by the State Legal Services Authority and the National Legal Services Authority. The Form for Application for Legal Services should be provided to the child by the police at the time of making the report under Section 19(1).

(ii) *Legal Counselling* : Complainants in need of legal aid/assistance/advice in cases of violations of child rights may seek aid/assistance from the Legal Aid Cell so that the child is able to testify in court without fear.

(iii) *Legal Advice* : The Cell shall render such aid/assistance/advice to the complainant as well as send its legal opinion in such cases to the concerned Government authorities for suitable action. Governmental and Non Governmental Organisations, Civil Society Organisations, voluntary organisations, parents, relatives, concerned friends and members of the public may, on behalf of the child in need of care & protection, approach the Cell and receive legal advice regarding the legal rights of the child and the means for accessing those rights. The Cell will provide requisite information and advice to the concerned persons regarding the legal

options available for protecting the interests of the child. The Cell will also assist the concerned in making a decision regarding various options available to pursue the case and if required help in formulation of complaints, petitions, etc.

Other services offered by the Legal Services Authority:

- (i) Payment of court and other process fee;
- (ii) Charges for preparing, drafting and filing of any legal proceedings;
- (iii) Charges of a legal practitioner or legal advisor;
- (iv) Costs of obtaining decrees, judgments, orders or any other documents in a legal proceeding;
- (v) Costs of paper work, including printing, translation etc.

1.4. *Mode of selection of lawyers to represent children who have been sexually abused* : The DLSA shall draw a panel of qualified and experienced advocates to represent child victims of sexual abuse. This panel should comprise of a mix of advocates having practice experience of more than 3 to 5 years as well as junior advocates. Conviction, commitment and experience in the field of child rights should be relevant considerations for empanelment.

Advocates may initially be empanelled for a period of one year which can be extended on the basis of performance.

1.5. *Payment of Legal Aid Counsellors.*— The Legal Aid Counsels will be paid for their services by the LSA as per the approved schedule of fees.

2. *Guidance on examining child victims and witnesses.*— During criminal investigation, some minimum levels of protection are required in relation to any interviews with the victim. These should be carried out in a sensitive manner and advocates as well as law enforcement officials should have received appropriate training to this end. Such training should ensure that these persons know appropriate methods of interviewing which will take account of a victim's particular situation minimise distress and maximise the collection of high-quality evidence. In order to ensure that the child-friendly trial procedures established under the Act are optimized, the following guidance should be kept in mind by legal representatives of a child who has been a victim of an offence under the Act:

2.1 *Before trial :*

(i) List cases for an as soon as possible and avoid adjournments : It is in the interest of the child that the trial is concluded as quickly as possible. Prolonging the judicial process will only cause more traumas to the child.

(ii) Ensure that communication with the child is in an understandable language and manner : The majority of young witnesses experience communication difficulties while giving evidence, often because questioning is developmentally or otherwise inappropriate. Before a child gives evidence, try having a conversation with him outside the Court so that you have an idea about his/her communication abilities and concentration span.

(iii) Consider what special measures may be taken in light of the child's wishes and needs : Make whatever applications are necessary to ensure that the child receives the benefit of existing child-friendly measures. Ensure applications are made within time limits so that the child can be informed of decisions before trial.

(iv) Ensure that the child is able to exercise his/her right to be accompanied by an adult in whom he has trust and confidence : This could be the child's parent, guardian, or other person, or the support person appointed by the CWC.

(v) Chart all stages of children's evidence to minimize time at court and give them a fresh start in the morning : The start of children's testimony should not be delayed by other matters on the court list. It is best to make an estimate of the amount of time the child will have to be present in Court, and in doing this, to bear in mind his/her concentration span, the length of any recording, the best time to view it and the need for breaks. Request the Special Court to accommodate these requirements.

(vi) Request that the child is given an opportunity to visit the court to familiarize himself with it before the trial : This will enable the child to experience the atmosphere in Court so that he is not intimidated at the trial and avoid the need for him to attend early on the day of trial to see facilities. It will also allow him to express an informed view about special measures, so that a revised application can be made if necessary in advance of trial.

(vii) Request that the child sees or can be briefed on his/her statement for the purpose of memory-refreshing before trial

(viii) Consider the witness's access to the building and suitability of waiting areas : Where it is difficult to segregate young witnesses from defendants within and around the building, consider standby arrangements or the use of remote live links.

2.2 *At trial* : (i) Children have the right to be heard in any judicial and administrative proceedings affecting them. They must be given a reasonable opportunity to express their views all matters affecting him and these must be taken into account. He should also be allowed to provide initial and further information, views or evidence during the proceedings.

(ii) Children have the right to information about the case in which they are involved, including information on the progress and outcome of that case, unless the lawyer considers that it would be contrary to the welfare and best interests of the child. It would be best if the lawyer coordinates with other persons or agencies concerned with the child's welfare, such as the support person, so that this information is conveyed in the most effective manner. Victims should receive the most appropriate information on the proceedings from all their representatives, and the assistance of a support person appointed under rule 4(7) most often constitutes the best practice in ensuring that full information is conveyed to the victim.

Such information would include :

- (a) Charges brought against the accused or, if none, the stay of the proceedings against him;
- (b) The progress and results of the investigation;
- (c) The progress of the case;
- (d) The status of the accused, including his/her bail, temporary release, parole or pardon, escape, absconding from justice or death;
- (e) The available evidence;
- (f) The child's role in the proceedings;
- (g) The child's right to express their views and concerns in relation to the proceedings;

- (h) The scheduling of the case;
 - (i) All decisions, or, at least, those decisions affecting their interests;
 - (j) Their right to challenge or appeal decisions and the modalities of such appeal;
 - (k) The status of convicted offenders and the enforcement of their sentence, including their possible release, transfer, escape or death.
- (iii) Ensure ahead of time that equipment is working, recordings can be played and that camera angles will not permit the witness to see the defendant : Do not wait until the young witness is in the live link room to run checks : Delays and malfunctions can be disruptive to the child. Where a live link is being used during the child's testimony, ensure that they are able to see all of the questioner's face.
- (iv) Explain that the judge or magistrates can always see the witness over the live video link: Explain that this is the case even when the witness cannot see the judge or magistrates.
- (v) Request the Public Prosecutor to himself to the child before the trial and to answer his/her questions: Judges and magistrates may also ask if the child would like to meet them before the trial starts, to help to establish rapport and put the child at ease. Under the POCSO Act, 2012 questions to the child will be routed through the Judge, and it would be useful for the child to be familiar with their manner of conversation, and *vice versa*.
- (vi) Encourage the child to let the court know if they have a problem: They may not understand a question or questions that are too fast, or they may need a break. However, many children will not say they do not understand, even when told to do so. Professional vigilance is therefore always necessary to identify potential miscommunication, and it is the child's counsel who will have to be mindful of any instance where the child is losing concentration, feeling ill, etc.
- (vii) Do not ask the child at trial to demonstrate intimate touching on his/her own body: This may be construed as abusive. The child can instead be asked to point to a body outline diagram.

3. *Role of lawyer for the child* : The Legal Aid services lawyer, or, as the case may be, the private lawyers appointed by the child and/or his/her family, plays a critical role. While it is the Special Public Prosecutor appointed under the POCSO Act, 2012 who will essentially be in charge of the trial in the Special Court, the child's lawyer is entrusted with the task of ensuring that the child's interest is protected. Thus, his/her role extends to representing the child, helping uncover the nature and extent of abuse, identifying responsible parties and securing damages to compensate the victim and facilitate the healing process.

In addition to this, the legal aid or private lawyer should also be able to build a good rapport with the Special Public Prosecutor, as this would ensure that all concerns in respect of the child are raised before the Court in the course of the trial.

(i) The lawyer must provide independent representation and advice to the child.

(ii) The lawyer has a duty to put before the Court the views of the child, but, should not require the child to express a view if he does not want to do so. However, the lawyer shall not be required to put before the Court any views expressed to him in confidence.

(iii) Where a lawyer has been appointed to represent a number of children, some of whom are able to provide a view as to representation and some of whom are unable to do so, the lawyer must be alert to the possibility of conflict. In some cases the lawyer may be obliged to seek separate representation for one or more of the children.

(iv) Adequate representation and the right to be represented independently from the parents should be guaranteed, especially in proceedings where the parents, members of the family or caregivers are the alleged offenders.

(v) Where a conflict arises between a child's views and information relevant to the welfare and best interests of the child, the lawyer should :

(a) discuss the issues and the lawyer's obligations with the child;

(b) attempt to resolve the conflict with the child; and

(c) advise the Court of the lawyer's position and, in the case where the lawyer is unable to resolve the conflict and as a matter of professional judgment can advocate only the child's views, invite the Court to appoint another lawyer.

3.1 *The lawyer shall represent the child in accordance with the child's welfare and best interests.*

Where a child is :-

(i) by virtue of his/her age, maturity or disability, unable to express a view; or

(ii) able to express a view but, his/her age, maturity or disability are such that any view should be treated with caution; or

(iii) unable or unwilling to express a view or in any way guide representation,

In such cases, the lawyer may be guided by the following general guidance :

(i) The older, the child, the more weightage should be given to the child's instructions. The younger the child, the more representation shall be in accordance with the child's welfare and best interests.

(ii) The lawyer has a duty to see that all factors that impact on the child's welfare and best interests are put before the Court.

(iii) In determining what best serves the child's welfare and best interests, the lawyer must take into account the principle that decisions affecting the child should be made and implemented within a timeframe that is appropriate to the child's sense of time.

(iv) The lawyer must meet with the child he is appointed to represent, unless there are exceptional circumstances to prevent this. The timing and venue for such meeting and any further meetings should be at the discretion of the lawyer. However, the lawyer shall meet with the child at a time which ensures that the child's views are up to date at the time of the hearing, so, that they can be taken into account by the Court.

(v) As a general rule, the lawyer shall act in terms of the child's instructions, conveying them to the Court by direct evidence if possible, call such witnesses as are required to carry out those instructions and examine and cross-examine and make submissions on behalf of the child.

(vi) The Act provides under Section 33(8) that the Special Court may award compensation to the child. The lawyer should ensure that the child and his/her family are aware of this, and should make the appropriate applications for interim and final compensation as provided under Rule 7.

3.2 *At a hearing, the lawyer should :* (i) Identify all relevant issues which need to be determined in regard to the child's welfare and best interests;

(ii) Ensure that the Court has all the necessary information that is relevant to the welfare and best interests of the child, including the views of the child, so that an informed decision can be made;

(iii) Call evidence where appropriate (other than any Court's witness), for example, from psychological and/or medical professionals and teachers;

(iv) Ensure the lawyer does not give evidence himself or herself;

(v) Cross-examine to ensure all relevant issues are fully explored; and

(vi) Make submissions on behalf of the child.

3.3 *After the conclusion of the trial :* (i) The lawyer should communicate and explain the given decision or judgment to the child in a language adapted to the child's level of understanding. He should give the necessary information on possible measures that could be taken, such as appeal or other mechanisms for complaints as well as compensation.

(ii) When a decision has not been enforced, the child should be informed through his/her lawyer of available remedies either through non-judicial mechanisms or access to justice.

(iii) The child's lawyer, guardian or legal representative should take all necessary steps to claim compensation for the child. Rule 7(6) provides that nothing shall prevent a child or his/her parent or guardian or any other person in whom the child has trust and confidence from submitting an application for seeking relief under any other rules or scheme of the Central Government or State Government. Thus, if there is any additional scheme for compensation, the child's lawyer should inform the child of this and seek instructions on how to proceed further.

4. *Child-Friendly Courtrooms and Waiting Areas* : Many children find the courtroom experience intimidating and this intimidation can create stress in child victims. Under these circumstances, a child can be a poor witness, and the process of navigating the criminal justice system can compound a child's trauma. The POCSO Act, 2012 provides for a number of child-friendly procedures to be followed in the Special Court. In addition to this, some measures can be out in place in the Special Court to ensure that the child is not overcome by the circumstances. However, the rights of the accused, for example that of cross-examination of the child, must be protected while balanced against the rights and needs of these child victims.

Some of the ways to ensure the child's comfort is that screens are permanently in place in the Special Courts for the witness stands for the children. Additionally, the child-friendly courtrooms can be equipped with closed circuit television capabilities, which allow the child to testify in a separate room from the accused. Special waiting rooms should be provided within the court premises to allow the families to wait in privacy throughout the court proceedings.

CHAPTER – 9

GUIDE TO MANDATORY REPORTING

Section 21(1) of the POCSO Act, 2012 requires mandatory reporting of cases of child sexual abuse to the law enforcement authorities, and applies to everyone including parents, doctors and school personnel. Failure to report a suspicion of child abuse is an offence under the Act. The legislation makes it clear that the reporting obligation exists whether the information was acquired through the discharge of professional duties or within a confidential relationship. Any private person who fails to report suspected child abuse, having acquired the information in the discharge of his or her professional responsibilities, commits a summary conviction offence.

Similarly, school personnel, doctors and other professionals may, in the course of delivering services, receive information which causes them to suspect that a child has been sexually abused. It is possible that the information obtained includes the identity of the perpetrator. The alleged perpetrator may be a person who is unknown to the reporter of the offence, but, the suspicion could also involve a colleague, co-worker, friend or other associate. The obligation to report is unrestricted by any pre-condition that the complaint be first reported within the respective departments, services or agencies, even if the perpetrator is alleged to be an employee of that institution, service or agency. Thus, a person who has knowledge that an offence has been committed under the child can directly report it to the police or magistrate.

1. Why report ?

The purpose of reporting is to identify children suspected to be victims of sexual abuse and to prevent them from coming to further harm. Without detection, reporting and intervention, these children may remain victims for the rest of their lives, carrying the scars of the abuse throughout their lives and even, in some cases, repeating the pattern of abuse with their own children.

However, the nature of sexual abuse, the shame that the child victim feels and the possible involvement of a parent, family friend or other close person, makes it extremely difficult for children to come forward to report sexual abuse. This is why, the law provides for mandatory reporting, placing the responsibility to report not on the child but on a surrounding adult who may be in a better position to help.

2. Obligation to inform the child :

The Act does not lay down that a mandatory reporter has the obligation to inform the child and/ or his/her parents or guardian about his/her duty to report. However, it is good practice to let them know that this will need to be done.

For example, where a doctor is confronted with a situation where a child brought into his/her care is exhibiting symptoms of child sexual abuse, he should inform the child and/or his/her care giver that he has a legal duty to report the abuse. This will help establish an open relationship and minimize the child's feelings of betrayal if a report needs to be made. When possible, discuss the need to make a child abuse report with the family. However, be aware that there are certain situations where if the family is warned about the assessment process, the child may be at risk for further abuse, or the family may leave with the child.

3. What to report?

Explain, as well as you can, what happened or is happening to the child. Describe the nature of the abuse or neglect and the involved parties. Be as specific as possible. Be prepared to give the name, address, and telephone number of the child and also the name of the parent or caretaker if known. Even if you do not know all of this information, report what you do know. Tell all you know about the situation.

However, the reporter is not expected to investigate the matter, know the legal definitions of child abuse and neglect, or even know the name of the perpetrator. This should be left to the police and other investigative agencies.

A report of sexual abuse should contain the following information, if it is known :

- (i) The names and home address of the child and the child's parents or other persons believed to be responsible for the child's care.
- (ii) The child's present whereabouts.
- (iii) The child's age.
- (iv) The nature and extent of the child's injuries, including any evidence of previous injuries.

(v) The name, age, and condition of other children in the same household.

(vi) Any other information that you believe may be helpful in establishing the cause of the abuse to the child.

(vii) The identity of the person or persons responsible for the abuse or neglect to the child, if known.

(viii) Your name and address.

4. *Sanctions :*

4.1. Failure to report child abuse : The POCSO Act, 2012 provides under Section 21(1) that any person, who fails to report the commission of an offence or who fails to record such offence shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

4.2. Reporting false information : The POCSO Act, 2012 makes it an offence to report false information, when such report is made other than in good faith. It states that any person, who makes false complaint or provides false information against any person, in respect of an offence committed under sections 3, 5, 7 and section 9, solely with the intention to humiliate, extort or threaten or defame him, shall be punished with imprisonment for a term which may extend to six months or with fine or with both. Where such information is provided against a child, the punishment may extend to one year.

(By order of the Lieutenant-Governor)

M. GUNASEKARAN,

Under Secretary to Government (WCD).
